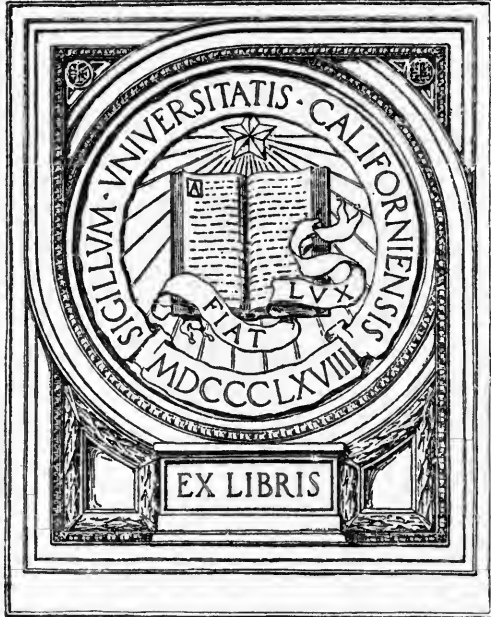


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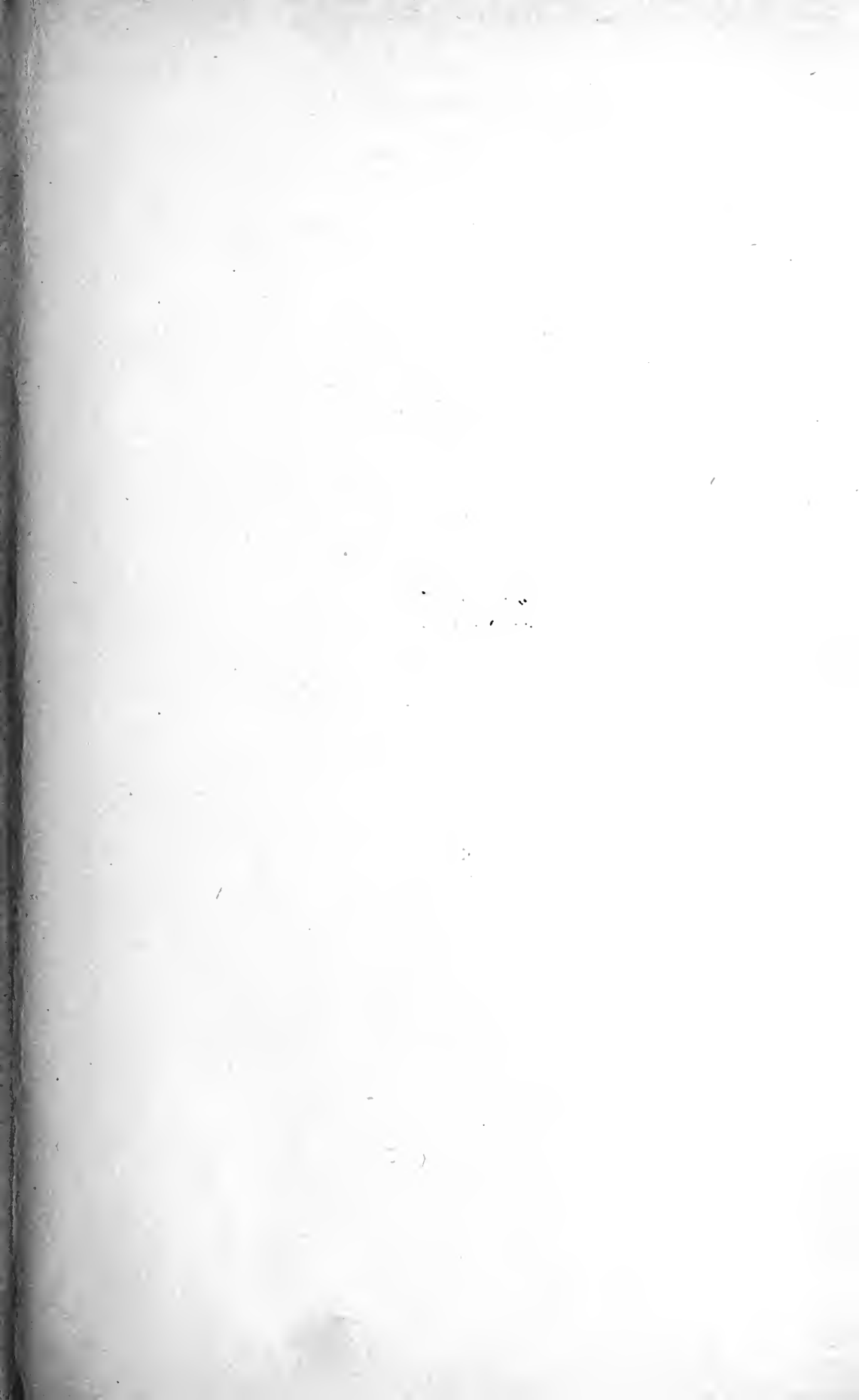


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EXCHANGE



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GENERAL LAWS

OF

MASSACHUSETTS

RELATING TO

RAILROAD CORPORATIONS, STREET RAILWAY COMPANIES, ELECTRIC RAILROAD COMPANIES, TELEPHONE AND TELEGRAPH COMPANIES, STEAMBOAT AND EXPRESS COMPANIES.

THE PUBLIC SERVICE COMMISSION LAW, CHAPTER 784 OF THE ACTS OF 1913;
CHAPTERS 433, 463 AND 516 OF THE ACTS OF 1906; PROVISIONS
OF THE REVISED LAWS AND SUBSEQUENT LEGISLATION
TO AND INCLUDING THE YEAR 1913.

MASSACHUSETTS PUBLIC SERVICE COMMISSION.

COMPILED BY THE EXECUTIVE SECRETARY.



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Massachusetts Public Service Commission.

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EVERETT E. STONE.

CLINTON WHITE.

GEORGE W. BISHOP.

ANDREW A. HIGHLANDS, *Secretary.*

CHARLES E. MANN, *Executive Secretary.*

ALLAN BROOKS, *Assistant Secretary.*

OFFICE, 1 BEACON STREET, BOSTON.

EXCHANGE

PUBLIC SERVICE COMMISSION LAW.

CHAPTER 784 OF THE ACTS OF 1913.

AN ACT TO CHANGE THE NAME, ENLARGE THE MEMBERSHIP AND INCREASE THE POWERS OF THE BOARD OF RAILROAD COMMISSIONERS.

SECTION 1. The board of railroad commissioners, existing under authority of section one of Part I of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six, shall hereafter be called the public service commission, hereinafter in this act called the commission, and its membership shall be enlarged so as to consist of five competent persons, hereinafter collectively called commissioners and individually referred to as commissioner, with the qualifications and disabilities in said act and this act prescribed. Upon the taking effect of this act the governor, with the advice and consent of the council, shall appoint two members in addition to the members of the board at that time and shall, notwithstanding the term for which any members of the board may have been heretofore appointed and the date of the expiration thereof, designate the terms of all of said members so that one member shall be appointed for five years, one for four years, one for three years, one for two years, and one for one year from the first day of July next. Thereafter, one member of the commission shall annually, before the first day of July, be appointed by the governor, with the advice and consent of the council, for a term of five years from said date. Whenever a new appointment is made, or whenever any vacancy in the commission is filled, the commissioners shall meet and choose one of their number as chairman. The chairman shall be paid an annual salary of eighty-five hundred dollars, and each of the other commissioners shall receive an annual salary of eight thousand dollars. Not more than three commissioners shall be appointed from the same political party.

Board of railroad commissioners, name changed to public service commission and membership enlarged.

Compensation.

SECTION 2. The commission shall, so far as may be necessary for the purpose of carrying out the provisions of this or any other act, have general supervision and regulation of, and jurisdiction and control over, the following services, when furnished or rendered for public use within the commonwealth, and all persons, firms, corporations, associations and joint stock associations or companies, hereinafter in this act collectively called common carriers and severally called a common carrier, furnishing or rendering any such service or services: —

Duties of the commission.

a. The transportation or carriage of persons or property, or both, between points within the commonwealth by railroads, street railways, hereinafter called railways, electric railroads, and steamships, including express service and car service carried on upon or rendered in connection with such railroads, railways, electric railroads or steamships.

b. The operation of all conveniences, appliances, facilities or equipment utilized in connection with, or appertaining to, such transportation or carriage of persons or property or such express service or car service, by whomsoever owned or by whomsoever provided, whether the service be common carriage or merely in facilitation of common carriage.

c. The transmission of intelligence within the commonwealth by electricity, by means of telephone lines or telegraph lines or any other method or system of communication, including the operation of all conveniences, appliances, instrumentalities, or equipment utilized in connection therewith or appertaining thereto.

R. L. 109,
§§ 24 and 27,
amended.

SECTION 3. Sections twenty-four and twenty-seven of chapter one hundred and nine of the Revised Laws are hereby amended by substituting for the words "commissioner of corporations", and for any other word or words intended to designate said commissioner of corporations in each of said sections, whenever any jurisdiction is conferred with respect to corporations established for and engaged in the business of transmitting intelligence by electricity, the words:— public service commission. Chapter four hundred and thirty-three of the acts of the year nineteen hundred and six is hereby amended by substituting in place of the words "Massachusetts highway commission", and any other word or words intended to designate the Massachusetts highway commission wherever used in said act, the words:— public service commission, — and said act is further amended by repealing section three thereof. Nothing in this act shall affect the compensation at present paid to the members of the Massachusetts highway commission.

1906, 433,
amended.

Not to affect
compensation
of Massachu-
setts highway
commission.

Any investi-
gation, etc.,
begun by Mas-
sachusetts
highway
commission
to be con-
tinued, etc.,
by public
service
commission.

SECTION 4. Any investigation, examination, proceeding or appeal undertaken, begun or instituted by or before the Massachusetts highway commission in connection with the supervision of companies engaged in the transmission of intelligence by electricity prior to the taking effect of this act, may be conducted and continued to a final termination by the public service commission, in the same manner, under the same terms and conditions, and with the same effect as though the jurisdiction of the Massachusetts highway commission over such matters had not been terminated; but no order or ruling heretofore made by said last mentioned commission and then in force shall be invalidated by the taking effect of this act. This act shall not affect pending actions or proceedings, civil or criminal, brought by or against the Massachusetts highway commission; but the same may be prosecuted or defended in the name of the public service commission: *provided*, that the

Pending
proceedings
not affected,
etc.

Proviso.

subject-matter thereof is within the statutory jurisdiction of said public service commission. And this act shall not release or waive any right or penalty which may have arisen or may have been incurred, nor shall any right or penalty created or enforceable under this act be a bar to or affect any recovery or indictment for such right or such penalty.

SECTION 5. Upon the taking effect of this act the Massachusetts highway commission shall transfer and deliver to the commission all books, maps, papers, files and records in its possession relating to the supervision of all companies engaged in the transmission of intelligence by electricity, and the commission is hereby authorized to take possession of all such books, maps, papers, files and records. Upon the taking effect of this act every officer or employee subordinate to or under the control of or connected with the Massachusetts highway commission whose sole duty or exclusive employment relates to or has reference to the supervision of companies engaged in the transmission of intelligence by electricity shall become subordinate to or be transferred to the control of the commission in the same manner as if he were appointed under section nine of this act.

Massachusetts highway commission to transfer, etc., certain records, etc., to public service commission.

Certain employees to be transferred, etc.

SECTION 6. Three members of the commission shall constitute a quorum. No contested matter upon which a public hearing by said commission is required by law shall be heard or decided by less than a quorum of the commission. So much of section six of chapter seven hundred and fifty-five of the acts of the year nineteen hundred and eleven as authorizes a hearing upon a contested matter to be held before one commissioner, and an order in any such matter made by one commissioner to be confirmed by the commission with the same effect as an order of the commission, is hereby repealed.

Quorum.

Repeal.

SECTION 7. Every vote, recommendation and order of the commission shall be entered of record; and the commission shall have an official seal, which shall be judicially noticed. Copies of all official documents and orders filed or deposited in the office of the commission, certified by a member of the commission, or by the secretary, to be true copies of the originals, under the official seal of the commission, shall be evidence in like manner as the originals in all courts of the commonwealth; and the commission may charge and collect for such copies ten cents for each folio. The fees so collected shall be paid into the treasury of the commonwealth.

Records and official seal.

Certified copies to be evidence, etc.

Fees.

SECTION 8. The commission may expend for the salaries and expenses authorized hereby and by other provisions of law, such amount as the general court shall annually appropriate. Sections three and four of Part I of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six are hereby repealed.

Expenses.

Repeal.

SECTION 9. The commission may appoint a counsel to the commission, and such attorneys as it may deem advisable, for such terms of office or employment and at such salaries as it

Counsel, appointment, etc.

may deem proper, who shall in the conduct of litigation and court proceedings act under the direction of the attorney-general. The commission may appoint or employ such engineers, accountants, statisticians, bureau chiefs and division heads, assistants, inspectors, clerks, and other subordinates as it may deem advisable, on such terms of office or employment and at such salaries as it may deem proper. The commission may expend such sums to procure opinions, advice, plans, surveys, appraisals, audits, examinations, statistics, information, apparatus, instruments, books, tables, maps, drawings, supplies and sundries, and for travel within or without the commonwealth and expense incidental thereto as it may from time to time deem requisite in the performance of its duties. The commission may, from any appropriations authorized by the general court for the use of the commission, expend such sums as it deems necessary in the performance of its duties under the provisions of this act. The provisions of chapter two hundred and forty-five of the acts of the year nineteen hundred and seven, relative to experts and inspectors of the commission, shall apply to the appointment, employment or continuance in office of any officer or employee of the commission whose salary or compensation is in excess of twelve hundred dollars per annum. The commission may assign to all officers and employees by it appointed or employed such functions and such rank as it shall from time to time deem advisable; but everything done by any such officer or employee shall be subject to the control of, and revision by, the commission. The commission may from time to time cause to be made a compilation of the statutes of this commonwealth relating to common carriers, with annotations.

SECTION 10. The commission may inquire into the rates, charges, regulations, practices, equipment and services of common carriers in this commonwealth, and elsewhere, rendering any service of a kind subject to its jurisdiction. It may be represented at any public hearings before any legislative committee or public board in this commonwealth, or of any other state or of the United States, with respect to any proposed legislation or action by public authorities within or without the commonwealth affecting any public service within the commonwealth subject to its supervision, whenever in its opinion such representation is desirable in the interests of this commonwealth. It may apply by petition to the interstate commerce commission for relief, and may present evidence and arguments to the said commission, in any case in which it is of opinion that a common carrier subject to its supervision is violating any provision of the interstate commerce law or any valid order or regulation made under authority thereof. The commission may also confer with or appear before boards of other states having powers over any of the common carriers rendering public services of the kind hereinbefore described, when in its judgment the interests of the commonwealth will be promoted thereby.

Appointment
of sub-
ordinates.

Expenses for
travel, etc.

Experts and
inspectors.

Compensation.

Compilation
of statutes
relating to
common
carriers.

Rates, etc.,
of common
carriers.

Commission
may petition
interstate
commerce
commission.

May confer,
etc., with
boards of
other states.

SECTION 11. The commission may, either through its members or by employees duly authorized by it, examine all books, contracts, records, documents, papers and memoranda of any common carrier, and by subpoena duces tecum compel the production thereof, or of duly verified copies of the same or any of them, and compel the attendance of such witnesses as the commission may require to give evidence at any such examination. The commission may provide for an annual audit by employees duly authorized by it of all the accounts of any common carrier or class of common carriers, whenever it deems such action advisable. Any employee or agent of the commission who divulges any fact or information which may come to his knowledge during the course of any such examination or audit, except in so far as he may be directed by the commission, or by a court or judge, or be authorized by law, shall be guilty of a misdemeanor, and shall be punished by a fine of not more than one thousand dollars.

To examine books, etc., of common carriers.

Annual audit.

Penalty.

SECTION 12. The commission may from time to time establish and prescribe a system of forms of accounts to be used by the common carriers subject to its supervision, or may classify the said common carriers and prescribe a system of forms of accounts for each class. The accounts of all such common carriers shall be kept in accordance with the forms prescribed. The commission may also in its discretion prescribe the forms of records and memoranda to be kept by such common carriers. The forms of accounts established by the commission and the forms of records and memoranda prescribed by it shall conform as nearly as may be to the similar forms from time to time established and prescribed by the interstate commerce commission.

Forms of accounts.

SECTION 13. The commission may, either through its members or responsible agents, engineers, inspectors or examiners duly authorized by it, enter upon any premises occupied by any common carrier for any purpose consistent with the provisions of this act. It may inspect the property, equipment, buildings, plants, factories, power-houses, ducts, conduits and offices of any common carrier. It shall have the right in connection with such inspection by its members, inspectors or experts to have such service, of the sort proffered by the common carrier, performed for it as it may reasonably require, including the right to ride upon any locomotive, car or steamship while in service, and to have, upon reasonable notice, the use of an inspection locomotive or car whenever that is necessary in the opinion of the commission, for a physical inspection of all or any of the lines and stations of any railroad or railway under its supervision.

Inspection of property, etc.

SECTION 14. The commission may investigate and determine the fair value for any purpose of all the property of any common carrier rendering a public service subject to the supervision of the commission, which is actually used or useful for the convenience of the public, whenever it deems the ascertainment

Valuation, etc.

of such value necessary in order to carry into effect any provision of this act. The commission may at any time on its own initiative make a revaluation of such property. In making any valuation under this section, the commission may have access to and use any books, documents or records in the possession of any department or board of the commonwealth or any political subdivision thereof.

Issue of stock, bonds, notes, or other evidences of indebtedness by railroads. [See *Op. Jan. 9, 1914, Bulkeley et al. v. N. Y., N. H. & H. R.R. Co. et als.*]

SECTION 15. A railroad corporation may issue shares of capital stock, bonds, notes or other evidences of indebtedness, for the purpose of funding its floating debt, or for any other lawful purpose, and may mortgage or pledge as security for the payment of such indebtedness a part or all of its railroad, equipment and franchise and a part or all of its real and personal property, including property to be afterward acquired. Any mortgage executed by a railroad company shall secure all bonds, notes and other evidences of indebtedness previously issued and then outstanding on equal terms with any other indebtedness secured by such mortgage. Its bonds, notes or other evidences of indebtedness may be issued by any such corporation to an amount which, when added to the amount of all its then outstanding bonds, notes or other evidences of indebtedness, shall not cause the aggregate amount of all its bonds, notes and other evidences of indebtedness to exceed twice the amount of the capital stock of the corporation actually paid in at the time, as determined under the provisions of chapter six hundred and twenty of the acts of the year nineteen hundred and eight; but such of the bonds issued or to be issued under a mortgage as are deposited to retire at or before maturity, bonds or other evidences of indebtedness previously issued and outstanding at the date of such mortgage while so deposited shall not be taken into account in applying this limitation. No bonds, coupon notes, or other evidences of indebtedness payable at periods of more than twelve months from the date thereof shall be issued unless authorized by a vote of the stockholders at a meeting called for the purpose, and no such bond, coupon note or other evidence of indebtedness shall be issued unless countersigned or certified by a person or trust company appointed by the corporation for that purpose.

Amount of issue.

Proposed issue to be authorized by vote.

Application for approval of issue of capital stock, bonds, etc. [See *Op. Jan. 9, 1914, Bulkeley et al. v. N. Y., N. H. & H. R.R. Co. et als.*]

SECTION 16. Before any railroad corporation shall issue any shares of capital stock or any bonds, notes or other evidences of indebtedness payable at periods of more than twelve months after the date thereof, it shall apply to the commission for its approval of the proposed issue to such amount as the commission shall determine to be reasonable and proper for the purpose of funding its floating debt properly incurred for lawful purposes, or reasonable and proper for any other lawful purpose set forth in the application for such approval. The commission shall render its decision upon such an application within thirty days after the final hearing thereon. The decision shall be in writing and shall assign the reasons therefor. Any order of the commission approving any such issue of stock, bonds, notes or

Decision.

other evidences of indebtedness may provide for the application of the proceeds thereof to such particular uses as the commission shall by that order or by some subsequent order specify, and the corporation shall not apply such proceeds otherwise than as thus specified in such order or orders. The decision of the commission as to the amount of stock which is reasonably necessary for the purpose for which such stock is proposed to be issued shall be based upon the price at which such stock is to be issued, and the commission shall refuse to approve any particular issue of stock, if, in its opinion, the price at which it is proposed to be issued is so low as to be inconsistent with the public interest. The provisions of this section shall not require a railroad corporation which is incorporated under the laws of one or more other states or foreign countries, as well as under the laws of this commonwealth, to apply to the commission for approval of the issue of shares of capital stock or of bonds, notes or other evidences of indebtedness for the sole ultimate purpose of providing funds for additions to or improvements of property of such corporation or of any corporation controlled by it through lease or stock ownership, if such property has a situs in another state or country by the laws of which such railroad corporation is authorized to operate a railroad therein and to make such additions to or improvements of such property, nor to apply to the commission for approval of the issue of shares of capital stock, bonds, notes or other evidences of indebtedness for paying, funding or refunding indebtedness incurred for such ultimate purpose; but all such proposed issues and the authority therefor shall, before the issue of such securities, be reported to the commission. Except for such ultimate purpose, such a railroad corporation shall not hereafter without the approval of the commission issue any shares of capital stock, or any bonds, notes or other evidences of indebtedness payable at periods of more than twelve months after the date thereof, in exchange for or to pay for shares of capital stock, notes, bonds or other evidences of indebtedness of any other corporation which are hereafter acquired or contracted for; but if the acquisition or holding of such securities by such railroad corporation shall be authorized by the laws of any state or country in which it has been incorporated, and shall also be permitted by the laws of the state or country in which such other corporation has been incorporated, the commission may authorize the acquisition of such securities by such railroad corporation, and may approve the issue of shares of capital stock, bonds, notes or other evidences of indebtedness by such railroad corporation in exchange for or to pay for such securities, provided that the commission shall find that such acquisition and the terms thereof are consistent with the public interest. The supreme judicial court or the superior court shall have jurisdiction in equity, upon the application of the commission, of the attorney-general, of any stockholder or of any interested party, to enforce the provisions of this and the preceding section and

Provisions
not to apply
to certain
railroads.

Proposed
issues to be
reported to
commission.

Enforcement
of provisions
of law.

all lawful orders and decisions, conditions or requirements of said commission made in pursuance thereof. A director, treasurer or other officer or agent of a railroad corporation, who knowingly votes to authorize the issue of, or knowingly signs, certifies or issues stock or bonds contrary to the provisions of this or the preceding section, or who knowingly votes to authorize the application, or knowingly applies the proceeds of such stock or bonds contrary to the provisions of said sections, or either of them, or who knowingly votes to assume or incur, or knowingly assumes or incurs in the name or behalf of such corporation, any debt or liability except for the legitimate purposes of the corporation, shall be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Sections fifty and sixty-five of Part II of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six, sections forty-eight and sixty-six of Part II of the same act, as amended by sections four and five of Part II of chapter seven hundred and twenty-five of the acts of the year nineteen hundred and twelve, and all other acts and parts of acts inconsistent with this or the preceding section, so far as they apply to railroad corporations, are hereby repealed.

Charges for
service
regulated.

SECTION 17. All charges made, demanded or received by any common carrier subject to the supervision of the commission for any service rendered or performed, or to be rendered or performed by it or in connection therewith in the conduct of its common carrier business, or made, demanded or received by any two or more common carriers joining in rendering or performing any service shall be just and reasonable, and every such common carrier and any two or more such common carriers joining in rendering or performing any service shall be entitled to make, demand and receive just and reasonable charges for any such service, and every unjust or unreasonable charge is hereby prohibited and declared unlawful; but charges heretofore established and set out in any schedule filed as hereinafter provided shall be deemed prima facie lawful until changed or modified by the commission under the powers conferred upon the commission by the provisions of this act, but this provision shall not give to such rates any greater weight as evidence of the reasonableness of other rates than they would otherwise have.

Free service,
tickets, etc.,
prohibited,
except, etc.

SECTION 18. No common carrier shall, directly or indirectly, issue or give any free service, free tickets, free pass or free transportation for passengers or property between points within this commonwealth; but nothing in this act shall be held to prohibit any railroad corporation from furnishing free passes or free transportation to officers or employees of the general court; nor to prohibit any railroad corporation or street railway company from giving free or reduced rate service to policemen, letter carriers and firemen while in uniform or engaged in the discharge of their duties; nor to prohibit any common carrier

from giving free or reduced rate service to its employees, or in cases of public emergency, or for such charitable purposes as may be approved by the commission; nor to prohibit any telephone or telegraph company, unless the commission shall otherwise order, from giving service at reduced rates to the commonwealth or to any city or town; nor shall this act be held to prohibit the commissioners, their experts, inspectors and counsel from being transported over the railroads and the railways of this commonwealth free of charge while engaged in the performance of their duties; nor shall this act be held to prohibit the giving by any such common carrier of free or reduced rate service to the classes defined and provided for in the act of congress entitled "An act to regulate commerce" and acts amendatory thereof.

SECTION 19. Subject to the powers of the commission to regulate and prescribe rates and charges, a common carrier may make commodity, transit, or other classes of rates. The furnishing by any common carrier of any service at the rates and upon the terms and conditions provided for in any existing contract executed prior to the first day of July, nineteen hundred and thirteen, shall not constitute a discrimination unless the commission shall so determine. The commission shall not be prevented from taking such action as it may deem proper by any commitment or agreement of a common carrier entered into by reason of any requirement or recommendation of any board or public officers acting under delegated authority from the general court prior to the enactment hereof. Unless the commission shall determine otherwise common carriers shall be permitted, whether required to do so by law or not, to issue mileage, workingmen's, excursion, school, or commutation passenger tickets, or reduced rate tickets for the transportation of children under twelve years of age, or of pupils attending schools, or joint interchangeable mileage tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of five hundred miles or more. All season tickets, before issuance, shall be subject to the approval of the commission as to the form thereof and the conditions named therein.

Fixing of rates, charges, etc., subject to commission's approval.

Issue of mileage and other tickets.

Season tickets.

SECTION 20. Every common carrier shall file with the commission and shall plainly print and keep open to public inspection, schedules showing all rates, joint rates, fares, telephone rentals, tolls, classifications and charges for any service, of every kind rendered or furnished, or to be rendered or furnished, by it within the commonwealth, and all conditions and limitations, rules and regulations and forms of contracts or agreements in any manner affecting the same, in such places, within such time, and in such form, and with such detail as the commission may order. In the case of common carriers the forms prescribed for such schedules and the requirements relative to the filing and publication thereof shall conform, as nearly as may be, to the forms prescribed by and the similar requirements of

Schedules of rates, etc., to be filed, etc.

Forms for schedules.

- Charges, etc., regulated. the interstate commerce commission. No common carrier shall, except as otherwise provided in this act, charge, demand, exact, receive, or collect a different rate, joint rate, fare, telephone rental, toll or charge for any service rendered or furnished by it, or to be rendered or furnished, from that applicable to such service as specified in its schedule filed with the commission and in effect at the time. Nor shall any common carrier refund, or remit directly or indirectly, any rate, joint rate, fare, telephone rental, toll or charge so specified, or any part thereof, nor extend to any person or corporation any rule, regulation privilege or facility except such as are specified in the said schedule and regularly and uniformly extended to all persons and corporations under like circumstances for the like, or substantially similar, service. Unless the commission otherwise orders, no change shall be made in any rate, joint rate, fare, telephone rental, toll, classification or charge, or in any rule or regulation or form of contract or agreement in any manner affecting the same as shown upon the schedules filed in accordance with this act, except after thirty days' notice to the commission, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when such changes shall take effect, and such notice to the public as the commission shall order, to be given prior to the time, fixed in such notice to the commission, for the changes to take effect. The commission for good cause shown may allow changes without requiring the thirty days' notice, under such conditions as it may prescribe, and may suspend the taking effect of changes under the circumstances and in the manner hereinafter provided. At the time when any changes take effect, they shall be plainly indicated upon existing schedules, or new schedules shall be printed and filed, as the commission may order. Nothing in this act shall be construed to prevent any telegraph or telephone corporation from continuing to furnish the use of its lines, equipment or service under any contract or contracts in force at the date when this act takes effect, or upon the taking effect of any schedule or schedules of rates subsequently filed with the commission, as hereinafter provided, at the rate or rates fixed in such contract or contracts: *provided, however*, that when any such contract or contracts are or become terminable by notice, the commission shall have power in its discretion to direct by order that such contract or contracts shall be terminated by the telegraph or telephone corporation party thereto, and thereupon such contract or contracts shall be terminated by such telegraph or telephone corporation as and when directed by such order.
- Refunds, etc.
- Thirty days' notice of change in rates, etc.
- Waiver of notice.
- Certain existing contracts not affected.
- Proviso.
- Public hearings on proposed changes in rates, etc.
- SECTION 21. Whenever the commission receives notice of any change or changes proposed to be made in any schedule filed under the provisions of this act, it shall have power, either upon complaint or upon its own motion, and after notice, to hold a public hearing and make investigation as to the propriety of such proposed change or changes. Pending any such

investigation and the decision thereon, the commission shall have power, by any order served upon the common carrier affected, to suspend the taking effect of such change or changes, but not for a longer period than six months beyond the time when such change or changes would otherwise take effect. After such hearing and investigation, the commission may make such order in reference to any new rate, joint rate, fare, telephone rental, toll, classification, charge, rule, regulation or form of contract or agreement proposed, as would be proper in a proceeding initiated after the same has taken effect. At any such hearing involving any proposed increase in any rate, joint rate, fare, telephone rental, toll or charge, the burden of proof to show that such increase is necessary in order to obtain a reasonable compensation for the service rendered shall be upon the common carrier. If at a hearing involving any proposed decrease in any rate, joint rate, fare, telephone rental, toll or charge demanded by any common carrier, it shall appear to the commission that the said rate, joint rate, fare, telephone rental, toll or charge is insufficient to yield reasonable compensation for the service rendered, the commission shall have power to determine what will be the just and reasonable rate or rates, fare or fares, telephone rental or rentals, toll or tolls, charge or charges, to be thereafter observed in such case as the minimum to be charged, and to make an order that the common carrier complained of shall not thereafter demand, charge or collect any rate, fare, telephone rental, toll, or charge lower than the minimum so prescribed without first obtaining the consent of the commission, not to be given without a public hearing.

Decision on
new rates,
etc.

SECTION 22. Whenever the commission shall be of opinion, after a hearing had upon its own motion or upon complaint, that the rates, fares or charges or any of them demanded, exacted, charged or collected by any common carrier now or hereafter subject to its jurisdiction, for any services to be performed within the commonwealth, or the regulations or practices of such common carrier affecting such rates, are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law, or that the rates, fares or charges or any of them chargeable by any such common carrier are insufficient to yield reasonable compensation for the service rendered and are unjust and unreasonable, the commission shall determine the just and reasonable rates, fares and charges to be charged for the service to be performed, and shall fix the same by order to be served upon every common carrier by whom such rates, fares and charges or any of them are thereafter to be observed. It shall be the duty of every such common carrier to observe and obey every requirement of every such order so served upon it, and to do everything necessary or proper in order to secure absolute compliance with and observance of every such order by all its officers, agents and employees. The commission may, after investigation, authorize a common carrier in special cases to charge less for longer than

Hearings
upon rates,
fares, etc.

Orders of
commission
to be obeyed,
etc.

for shorter distances for the transportation of passengers or property, whenever in the opinion of the commission such authorization is consistent with the public interests, and the commission may from time to time modify or revoke such authorization.

Hearings
upon service,
etc.

SECTION 23. Whenever the commission shall be of opinion, after a hearing had upon its own motion or upon complaint, that the regulations, practices, equipment, appliances or service of any common carrier, now or hereafter subject to its jurisdiction, are unjust, unreasonable, unsafe, improper or inadequate, the commission shall determine the just, reasonable, safe, adequate and proper regulations and practices, thereafter to be in force and to be observed, and the equipment, appliances and service thereafter to be used and shall fix and prescribe the same by order to be served upon every common carrier to be bound thereby. The commission shall have power after such a hearing to order from time to time that a railroad company shall operate its lines, of standard gauge, or such parts thereof as the commission shall prescribe, by electric power instead of by steam power, and in its order shall prescribe the time within which the work of electrification shall be done. Before making such order, the commission shall consider the relative importance and necessity of the changes in any specific regulations, practices, equipment and appliances proposed to be included therein and of other changes which may be brought to its attention in the course of such hearing, the financial ability of the carrier to comply with the requirements of the order, and the effect of the carrier's compliance therewith, upon its financial ability to make such other changes, if any, as may be deemed by the commission of equal or greater importance and necessity in the performance of the service which the carrier has professed to render to the public. It shall be the duty of every such common carrier to observe and obey every requirement of every such order so served upon it, and to do everything necessary or proper in order to secure absolute compliance with and observance of every such order by all its officers, agents and employees.

Orders of
commission
to be obeyed,
etc.

Hearings
upon a train
crew.

SECTION 24. Whenever the commission shall be of opinion, after a hearing had upon its own motion or upon complaint, that the number of men forming a train crew of any train operating in the commonwealth is not sufficient to operate said train for the safety of the public and the employees of the railroad, it shall thereupon order such changes as it may deem necessary.

Establishment
of through
routes, joint
rates, etc., for
passengers or
freight.

SECTION 25. Wherever there is no satisfactory through route for the transportation of passengers or freight at a reasonable rate the commission shall have power by order, after notice and a public hearing had upon complaint, to require any two or more railroad or railway companies whose lines, owned, operated, leased, or controlled by stock ownership or otherwise, form a continuous or connecting line of transporta-

tion, or could be made to do so by the construction and maintenance of switch connection or interchange track at connecting points, or by transfer of property or passengers at connecting points, to establish through routes and joint rates, fares and charges for the transportation of passengers and property, and for the operation of the cars and other equipment for such transportation, within the commonwealth, as the commission may by its order designate; and, in case such companies cannot agree as to the division of rates or the conditions under which such through routes or transportation shall be established or such cars or other equipment operated, the commission shall have power, after due hearing, to determine and prescribe the proportionate portions of such through rates payable to each of such companies, the conditions under which such through routes or transportation shall be established or such cars or other equipment operated, and, in case of railways, to grant locations upon which the grantee company may construct the switch connection or interchange track necessary to the establishment of such through routes or transportation, or to the operation of such cars or other equipment: *provided*, however, that a railroad or railway company shall have control of and responsibility for the management and operation of all trains or cars while they are upon its railroad or railway as fully as if it owned them. The commission may, upon reasonable terms and conditions, require and order any railroad or railway company which carries freight in carload lots to establish and maintain for the purpose of receiving or delivering freight in carload lots, a switch connection with any private side track constructed on land adjoining the location of any such railroad or railway, if the commission is of opinion that such connection is reasonable and practicable, can be put in and used with safety, and will furnish sufficient business to justify its construction and maintenance, and the commission may grant to any railway company the necessary locations in public ways and places for any switch connection ordered by the commission to be constructed by such railway company.

Proviso.

Switch connections for freight in carload lots.

SECTION 26. Every order of the commission shall be served upon every person or corporation to be affected thereby, either by personal delivery of a certified copy thereof, or by mailing a certified copy thereof, in a sealed package with postage prepaid, to the person to be affected thereby or, in the case of a corporation, to any officer or agent thereof upon whom a summons may be served under the laws of this commonwealth. It shall be the duty of every person and corporation to notify the commission forthwith, in writing, of the receipt of the certified copy of every order so served, and in the case of a corporation such notification shall be signed and acknowledged by a person or officer duly authorized by the corporation to admit such service. Within a time specified in the order of the commission every person and corporation upon whom it is served shall, if so required in the order, notify the commission in like manner

Orders of commission, how served.

Acknowledgment of receipt of orders.

Acceptance, etc.

whether the terms of the order are accepted and will be obeyed. Every order of the commission shall take effect at a time therein specified and shall continue in force either for a period which may be designated therein or until changed or abrogated by the commission.

Procedure to review rulings, etc., of commission by the court.

SECTION 27. The supreme judicial court shall have jurisdiction in equity to review, annul, modify or amend any rulings or orders of the commission which are unlawful to the extent only of such unlawfulness. The procedure before the said court shall be that prescribed by its rules, which shall state upon what terms the enforcement of the order shall be stayed. The attorney for any party petitioning the supreme judicial court hereunder shall file with the clerk of the court a certificate that he is of opinion that there is such probable ground for the appeal as to make it a fit subject for judicial inquiry, and that it is not intended for delay; and double costs shall be assessed by the court upon any such party whose petition shall appear to the court not to be a fit subject for judicial inquiry or shall appear to be intended for delay. The burden of proof shall be upon the party adverse to the commission to show that its order is invalid. Any proceeding in any court of this commonwealth directly affecting an order of the commission or to which the commission is a party shall have preference over all other civil proceedings pending in such court, except election cases.

Costs.

Preference over other civil proceedings, except election cases.

Enforcement of orders by the court.

SECTION 28. The supreme judicial court shall have jurisdiction upon the application of the commission to enforce all valid orders of the commission and all the provisions of this act. Whenever the commission shall be of opinion that a common carrier subject to its supervision is failing or omitting or about to fail or omit to do anything required of it by law or by order of the commission, or is doing anything or about to do anything or permitting anything or about to permit anything to be done, contrary to or in violation of the law or of any order of the commission, it shall direct counsel to the commission to begin, subject to the supervision of the attorney-general, an action or proceeding in the supreme judicial court in the name of the commission for the purpose of having such violations or threatened violations stopped and prevented either by mandamus or injunctions.

Act, how construed.

SECTION 29. This act shall be deemed and construed as a remedial act and in enlargement and extension of all previous acts and existing laws conferring upon or vesting in the commission any jurisdiction, powers or discretion with respect to any subject or matter treated in this act. Except as above provided all acts and parts of acts inconsistent with any provision of this act, and all acts and parts of acts which would in any way limit or prevent the exercise to the fullest extent of any of the jurisdiction, powers, authority or discretion delegated herein to the commission are hereby repealed: *provided*, that nothing herein contained shall be construed to repeal, directly or by implication, the provisions of chapter five hun-

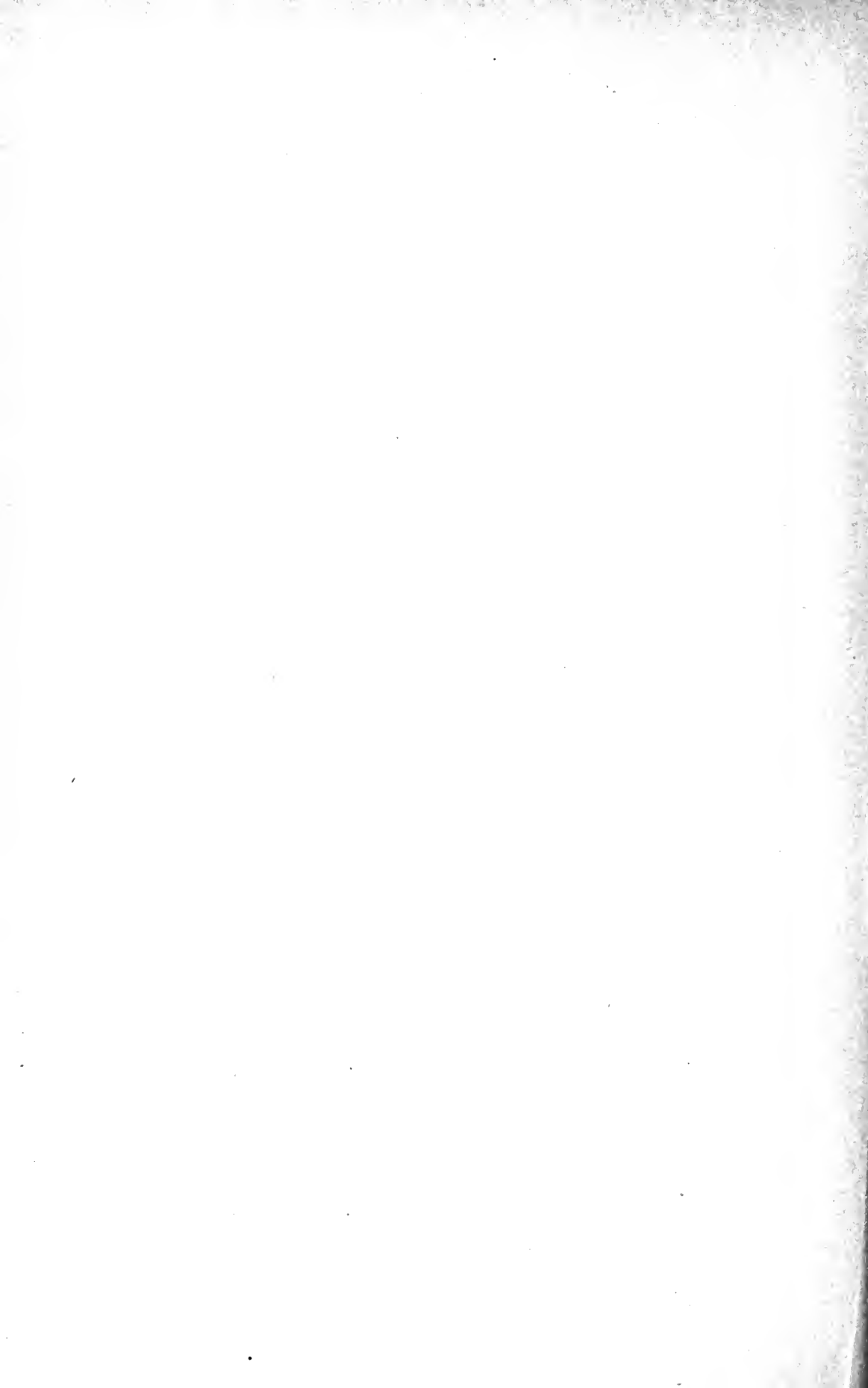
Repeal.

Proviso.

dred of the acts of the year eighteen hundred and ninety-seven, or to authorize the commission to make any order or take any action inconsistent with the provisions of said act or with any rights which have been acquired by any common carrier under any statute prior to the passage of this act.

SECTION 30. So much of section one of this act as provides for the appointment of additional members of the commission and for the designation of the respective terms of office of the commissioners shall take effect upon its passage, and, otherwise, this act shall take effect on the first day of July next.

Time of taking effect.



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Note. — For indexes to the general railroad, railway, telephone and telegraph laws of the Commonwealth, see end of this volume.

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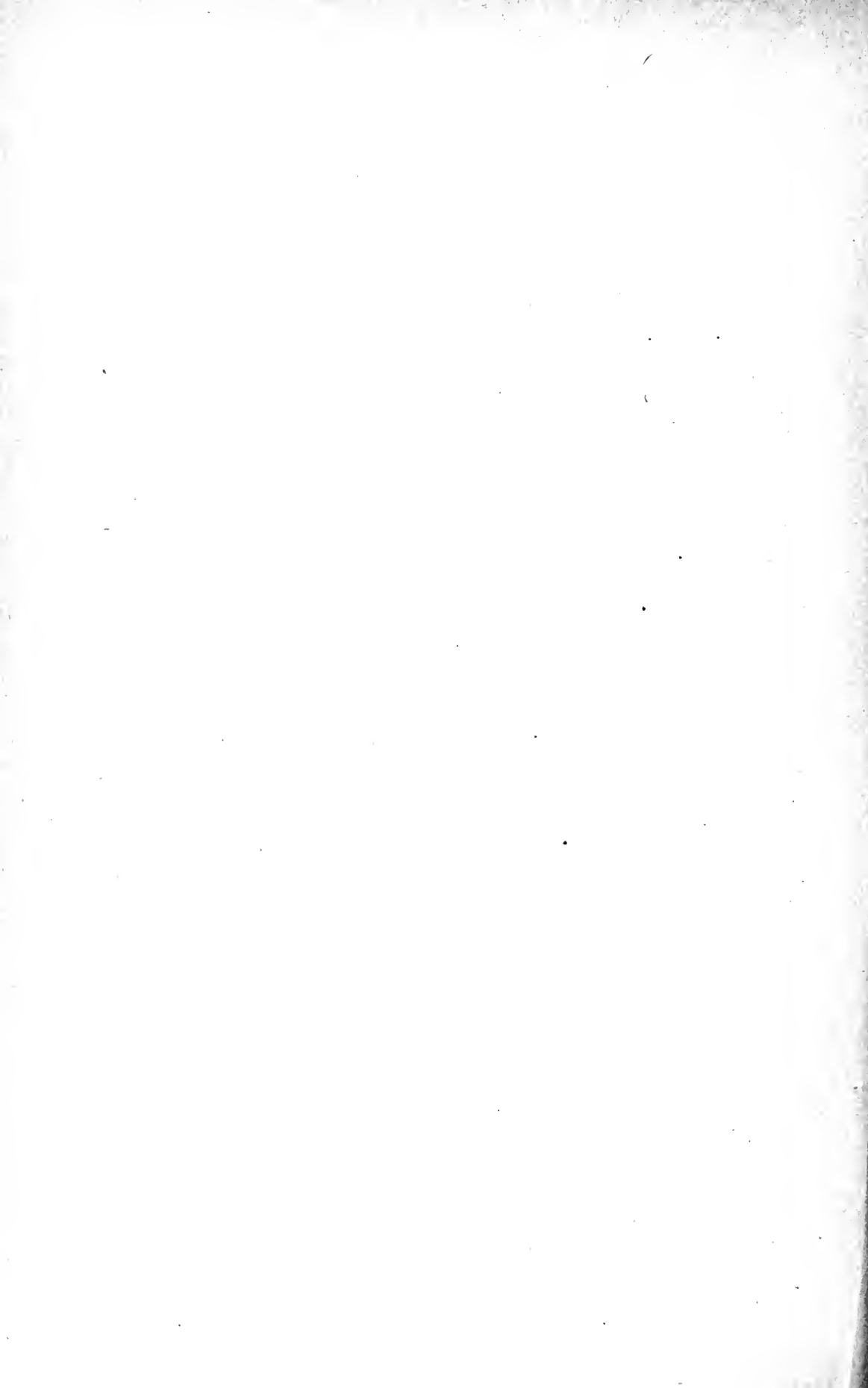
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UNIV. OF CALIFORNIA

GENERAL RAILROAD AND RAILWAY LAW OF 1906,

WITH

ADDITIONAL AND AMENDING STATUTES.

CHAPTER 463 OF THE ACTS OF 1906.

AN ACT RELATIVE TO RAILROAD CORPORATIONS AND STREET RAILWAY COMPANIES.

PART I.

OF RAILROAD CORPORATIONS AND STREET RAILWAY COMPANIES.

SECTION

- 1-4. Board of railroad commissioners.
- 5-20. General powers and duties of board.
- 21-22. Grade crossings.
- 23-28. Alteration of grade crossings.
- 29-45. Abolition of grade crossings.
- 46-48. Railroad and street railway relief corporations.
- 49-55. Railroad and street railway police.
- 56-57. Inspection of equipment.

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- 58. Railroad and street railway bridges.
- 59-60. Conditional sale of rolling stock.
- 61. Attachment of rolling stock.
- 62. Notice of accidents.
- 63. Penalty for loss of life.
- 64. Evasion of payment of fares.
- 65. Injury to signals.
- 66. Throwing missiles, etc.
- 67. Lease or purchase of franchise.

BOARD OF RAILROAD COMMISSIONERS.

[By the provisions of the Acts of 1913, chapter 784, section 1 (see below), the Board is to be hereafter called the Public Service Commission, and its membership is enlarged so as to consist of five competent persons.]

SECTION 1. There shall be a board of railroad commissioners, consisting of three competent persons, one of whom shall annually, before the first day of July, be appointed by the governor, with the advice and consent of the council, for a term of three years from said day. The board shall have a clerk, who shall be appointed by the governor, who shall keep a full and faithful record of its proceedings, and who shall serve such notices as the commissioners may require. The board may employ an assistant clerk, who shall perform such clerical and other office work as the board may require, and who, in the absence or during the disability of the clerk, may, if so directed by the board, perform his duties. The board may employ an accountant, skilled in the methods of railroad accounting, who shall, under its direction, supervise the method by which the accounts of corporations operating railroads or street railways

Railroad commissioners, clerks, etc.
 1864, 152, § 1.
 1869, 408, §§ 1, 13.
 1874, 372, § 6.
 1876, 185, § 3;
 206, § 1.
 P. S. 112, §§ 9, 11.
 1887, 334, § 2.
 1894, 535, §§ 1, 2.
 1895, 313.
 R. L. 111, § 8.
 1902, 432, § 1.
 153 Mass. 169.
Amended. See 1907, 245, page 4. 1911, 681. See 1913, 784, § 1, below, 205 Mass. 98.

are kept. The board may from time to time, if in its opinion it is necessary, appoint competent railroad and railway inspectors, not exceeding one for every [one thousand] *seven hundred and fifty* miles of railroad and railway track, each for a term of three years, and may for cause remove any such inspector and appoint another in his place. An appointment to fill a vacancy shall be for the residue of the unexpired term. The board shall appoint one or more competent experts to examine the reports required by section fifty-eight, and may, whenever in its opinion the public interests require, in connection with any proposed issue of stock or bonds by a railroad corporation or street railway company, employ competent experts to investigate the character, cost and value for railroad or railway purposes of the property of such corporation or company. The commissioners and clerks shall be sworn before entering upon the performance of their duties, and shall not be in the employ of or own stock in a railroad corporation or street railway company, nor shall they personally, or through a partner or agent, render any professional service or make or perform any business contract with or for a railroad corporation or street railway company chartered under the laws of this commonwealth, except contracts made with them as common carriers, nor shall they, directly, or indirectly, receive a commission, bonus, discount, present or reward from any such corporation or company.

Acts of 1913, Chapter 784, §§ 1-5.

Board of railroad commissioners, name changed to public service commission, and membership enlarged.

SECTION 1. The board of railroad commissioners, existing under authority of section one of Part I of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six, shall hereafter be called the public service commission, hereinafter in this act called the commission, and its membership shall be enlarged so as to consist of five competent persons, hereinafter collectively called commissioners and individually referred to as commissioner, with the qualifications and disabilities in said act and this act prescribed. Upon the taking effect of this act the governor, with the advice and consent of the council, shall appoint two members in addition to the members of the board at that time and shall, notwithstanding the term for which any member of the board may have been heretofore appointed and the date of the expiration thereof, designate the terms of all of said members so that one member shall be appointed for five years, one for four years, one for three years, one for two years, and one for one year from the first day of July next. Thereafter, one member of the commission shall annually, before the first day of July, be appointed by the governor, with the advice and consent of the council, for a term of five years from said date. Whenever a new appointment is made, or whenever any vacancy in the commission is filled, the commissioners shall meet and choose one of their number as chairman. The chairman shall be paid an annual salary of eighty-five hundred dollars, and each of the other commissioners shall receive an annual salary of eight thousand dollars. Not more than three commissioners shall be appointed from the same political party.

Duties of the commission.

SECTION 2. The commission shall, so far as may be necessary for the purpose of carrying out the provisions of this or any other act, have general supervision and regulation of, and jurisdiction and control over, the following services, when furnished or rendered for public use within the

commonwealth, and all persons, firms, corporations, associations and joint stock associations or companies, hereinafter in this act collectively called common carriers and severally called a common carrier, furnishing or rendering any such service or services:—

a. The transportation or carriage of persons or property, or both, between points within the commonwealth by railroads, street railways, hereinafter called railways, electric railroads, and steamships, including express service and car service carried on upon or rendered in connection with such railroads, railways, electric railroads or steamships.

b. The operation of all conveniences, appliances, facilities or equipment utilized in connection with, or appertaining to, such transportation or carriage of persons or property or such express service or car service, by whomsoever owned or by whomsoever provided, whether the service be common carriage or merely in facilitation of common carriage.

c. The transmission of intelligence within the commonwealth by electricity, by means of telephone lines or telegraph lines or any other method or system of communication, including the operation of all conveniences, appliances, instrumentalities, or equipment utilized in connection therewith or appertaining thereto.

SECTION 3. Sections twenty-four and twenty-seven of chapter one hundred and nine of the Revised Laws are hereby amended by substituting for the words "commissioner of corporations", and for any other word or words intended to designate said commissioner of corporations in each of said sections, whenever any jurisdiction is conferred with respect to corporations established for and engaged in the business of transmitting intelligence by electricity, the words:— public service commission. Chapter four hundred and thirty-three of the acts of the year nineteen hundred and six is hereby amended by substituting in place of the words "Massachusetts highway commission", and any other word or words intended to designate the Massachusetts highway commission wherever used in said act, the words:— public service commission,— and said act is further amended by repealing section three thereof. Nothing in this act shall affect the compensation at present paid to the members of the Massachusetts highway commission.

SECTION 4. Any investigation, examination, proceeding or appeal undertaken, begun or instituted by or before the Massachusetts highway commission in connection with the supervision of companies engaged in the transmission of intelligence by electricity prior to the taking effect of this act, may be conducted and continued to a final termination by the public service commission, in the same manner, under the same terms and conditions, and with the same effect as though the jurisdiction of the Massachusetts highway commission over such matters had not been terminated; but no order or ruling heretofore made by said last mentioned commission and then in force shall be invalidated by the taking effect of this act. This act shall not affect pending actions or proceedings, civil or criminal, brought by or against the Massachusetts highway commission; but the same may be prosecuted or defended in the name of the public service commission: *provided*, that the subject-matter thereof is within the statutory jurisdiction of said public service commission. And this act shall not release or waive any right or penalty which may have arisen or may have been incurred, nor shall any right or penalty created or enforceable under this act be a bar to or affect any recovery or indictment for such right or such penalty.

SECTION 5. Upon the taking effect of this act the Massachusetts highway commission shall transfer and deliver to the commission all books, maps, papers, files and records in its possession relating to the supervision of all companies engaged in the transmission of intelligence

R. L. 109,
§§ 24 and 27,
amended.

1906, 433,
amended.

Not to affect
compensation
of Massachu-
setts highway
commission.

Any investi-
gation, etc.,
begun by Mas-
sachusetts
highway
commission
to be con-
tinued, etc.,
by public
service
commission.

Pending
proceedings
not affected,
etc.

Proviso.

Massachusetts
highway
commission to
transfer, etc.,
certain
records, etc.,

to public service
commission.
Certain
employees to
be transferred,
etc.

by electricity, and the commission is hereby authorized to take possession of all such books, maps, papers, files and records. Upon the taking effect of this act every officer or employee subordinate to or under the control of or connected with the Massachusetts highway commission whose sole duty or exclusive employment relates to or has reference to the supervision of companies engaged in the transmission of intelligence by electricity shall become subordinate to or be transferred to the control of the commission in the same manner as if he were appointed under section nine of this act.

Acts of 1911, Chapter 681.

An Act relative to the Appointment of Railroad and Railway Inspectors by the Board of Railroad Commissioners.

1906, 463,
Part I, § 1,
amended.

Section one of Part I of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby amended by striking out the words "one thousand", in the nineteenth and twentieth lines, and inserting in place thereof the words: — seven hundred and fifty. [*Approved July 15, 1911.*]

Acts of 1911, Chapter 214.

An Act to authorize the Board of Railroad Commissioners to employ the Engineer of Grade Crossings appointed by the Attorney-General.

The board of railroad commissioners is hereby authorized to employ the engineer of grade crossings appointed under the provisions of section one of chapter three hundred and seventy-two of the acts of the year nineteen hundred and eight, upon engineering work, to such extent as the board may deem expedient: *provided, however*, that such employment shall not interfere with the duties required of said engineer by said section. The board shall determine the cost of such services upon the basis of the annual compensation received by the said engineer under the provisions of the said section, and shall pay to him the amount so determined, which amount shall be deducted from such annual compensation. [*Approved March 28, 1911.*]

Acts of 1907, Chapter 245.

An Act relative to the Exemption from the Civil Service Rules of the Experts and Inspectors of the Railroad Commissioners.

1906, 463,
amended.
R. L. 19, §§ 6, 7.
See below.
1913, 784, § 9.

SECTION 1. The positions of experts and railroad and railway inspectors provided for in section one of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six shall be exempt from classification by the civil service commission unless the said commission with the approval of the governor and council shall hereafter so classify the same under the authority given them by chapter nineteen of the Revised Laws and acts in amendment thereof and in addition thereto.

SECTION 2. This act shall take effect upon its passage. [*Approved March 25, 1907.*]

Acts of 1913, Chapter 784, § 9.

1907, 245, to
apply, when.

SECTION 9. . . . The provisions of chapter two hundred and forty-five of the acts of the year nineteen hundred and seven, relative to experts and inspectors of the commission, shall apply to the appointment, employment or continuance in office of any officer or employee of the commission whose salary or compensation is in excess of twelve hundred dollars per annum. . . .

Salary of com-
missioners,
clerks, etc.

[SECTION 2. The annual salary of the chairman of the board shall be five thousand dollars, that of the other commissioners

four thousand dollars each, of the clerk twenty-five hundred dollars, of the assistant clerk not more than twelve hundred dollars, and of each railroad and railway inspector two thousand dollars, payable by the commonwealth. The commissioners shall be provided with an office in the state house, or in some other suitable place in the city of Boston, in which their records shall be kept. In the performance of their official duties, they shall be transported over the railroads and railways in this commonwealth free of charge, and may employ and take with them experts or other agents whose services they consider temporarily of importance. The board may expend not more than forty-five hundred dollars annually in procuring necessary books, maps, statistics and stationery and in defraying expenses incidental and necessary to the performance of its duties, and not more than twenty-five hundred dollars annually in defraying the compensation of an accountant. A statement of such expenditures shall accompany its annual report.]

Section 2. The annual salary of the chairman of the board of railroad commissioners shall be six thousand dollars, and that of the other commissioners five thousand dollars each; of the clerk, three thousand dollars; of the assistant clerk, eighteen hundred dollars; and of each railroad and railway inspector, two thousand dollars; payable by the commonwealth. The commissioners shall be provided with an office in the state house or in some other suitable place in the city of Boston, in which their records shall be kept. In the performance of their duties they shall be transported over the railroads and railways of this commonwealth free of charge, and may take with them experts and other agents whose services they consider temporarily of importance. The board may expend annually such sum as the general court may from year to year appropriate in procuring necessary books, maps, statistics and stationery, and in defraying expenses incidental and necessary to the performance of its duties, and not more than twenty-five hundred dollars annually in defraying the compensation of an accountant. A statement of such expenditures shall accompany its annual report.

Acts of 1913, Chapter 784, § 9.

. . . The commission may appoint or employ such engineers, accountants, statisticians, bureau chiefs and division heads, assistants, inspectors, clerks, and other subordinates as it may deem advisable, on such terms of office or employment and at such salaries as it may deem proper. . . .

[SECTION 3. The sums of money annually appropriated by the general court for the salaries and expenses of the board of railroad commissioners, its clerks and employees, shall be apportioned by the tax commissioner among the several railroad corporations and street railway companies, and on or before the first day of July in each year he shall assess upon each of said corporations and companies its share of such sums in propor-

1864, 152, § 8.
1869, 408,
§§ 7, 8.
1873, 377, § 6.
1874, 372, § 17.
1876, 185, § 3.
1879, 287, § 1.
P. S. 112, § 10.
1885, 119, 164.
1890, 200, § 1.
1894, 535, § 7.
1895, 313.
1900, 406.
1901, 54.
R. L. 111, § 9.
1902, 402.
1904, 96.
Superseded
1910, 401.
1912, 622.
1913, 784,
§§ 1, 9.

1906, 463,
Part I, § 2,
amended.
1910, 401.

Apportion-
ment of
salaries, etc.
1864, 152, § 7.
1869, 408, § 9.
1874, 372,
§ 18.
1878, 167, § 1.
P. S. 112, § 12.
1887, 334, § 4.
1890, 200, § 3.
1894, 535, § 8.

1895, 313.
1897, 376, § 4.
R. L. 111, § 10.
1904, 429.
See 1912, 496.
Repealed,
1913, 784, § 8.
Apportionment
of salaries, etc.,
balance carried
forward.
1904, 429.
Repealed,
1913, 784, § 8.

tion to its gross earnings from the transportation of persons and property for the last preceding year in which the assessment is made; and such assessments shall be collected in the same manner as taxes upon corporations.]

[SECTION 4. Of the amount so assessed and collected any balance remaining on the thirtieth day of November in any year shall be carried forward to the next year, and shall be taken into account in making the appropriation for that year.]

Acts of 1913, Chapter 784, § 8.

*Salaries and
expenses.*
1906, 463.
*Pl. I, §§ 3, 4,
repealed.*

SECTION 8. The commission may expend for the salaries and expenses authorized hereby and by other provisions of law, such amount as the general court shall annually appropriate. Sections three and four of Part I of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six are hereby repealed.

GENERAL POWERS AND DUTIES OF BOARD.

Annual report.
1869, 408,
§§ 3, 11.
1870, 307, § 2.
1874, 372,
§§ 9, 14, 15.
P. S. 112,
§§ 13, 16, 26.
R. L. 111, § 11.
See 1908,
552, § 1;
1910, 588, 596;
1911, 487.

SECTION 5. The board shall make an annual report, which shall be transmitted to the secretary of the commonwealth, on or before the first Wednesday in January, and be laid before the general court. The report shall include such statements, facts and explanations as will disclose the actual working of the system of railroad and railway transportation in its bearing upon the business and prosperity of the commonwealth, such suggestions as to its general railroad and railway policy, or any part thereof, or the condition, affairs or conduct of any railroad corporation or street railway company, as may seem to it appropriate, such tables and abstracts of all the returns required to be made by a corporation or company, as it considers expedient, and a report of any proceedings taken under the provisions of section nine.

Revised Laws, Chapter 9, § 7.

Public
documents.
1857, 40, § 2.
G. S. 4, § 2.
1863, 219.
1876, 178.
1877, 248,
§§ 1, 5.
1878, 264, § 1.
1880, 193, § 1.
1881, 293, § 1.
P. S. 4, § 7.
1885, 369.
1889, 440, § 7.
1894, 393, § 7.
1896, 258.
1897, 243.
1901, 257.
*[Repealed in
part. See
1902, 438,
§§ 4, 7];
1905, 158.
1909, 67;
371, § 8.
1910, 268.
1911, 43.*

SECTION 7. There shall be printed annually, before the assembling of the general court or as soon thereafter as possible, the number of copies of documents and reports hereinafter specified, the same to be numbered in a series to be called public documents. Said reports shall be as brief as possible without omitting any facts or information required by law to be contained therein. [No maps, plans, photogravures, wood cuts or other pictorial illustrations shall be introduced unless specially authorized by the general court or either branch thereof or, if the cost does not exceed five hundred dollars, with the previous approval of the secretary of the commonwealth, acting as supervisor of state printing, and of the auditor of accounts; but said reports may include abstracts or compilation of the statutes relative to the subject matter of the respective reports.] They shall be transmitted to the general court through the office of the secretary of the commonwealth. No more copies than is herein provided for shall be printed at the expense of the commonwealth or be paid for out of any contingent fund, or out of the earnings of any department or institution which are the property of the commonwealth; and no bill for printing any larger number shall be approved by the auditor or paid out of any funds belonging to the commonwealth.

Of the board of railroad commissioners, four thousand two hundred and fifty copies, of which two thousand two hundred and fifty copies shall be bound without returns.

P. S. 4, § 7.	1889, 440, § 7.	1894, 393, § 7.	[Repealed by 1905, 138.]	Railroad. 1876, 178. 1877, 248, § 1. 1878, 264, § 1. 1880, 193, § 1. 1881, 293, § 1.
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Acts of 1902, Chapter 438, §§ 4, 7.

SECTION 4. All boards or commissions before entering upon the preparation of any publication shall submit to the state board of publication careful statements of the scope, and estimates of the size, of such publication. The said board shall have power to determine the number of pages to which any such report may extend, and to determine whether it shall include maps, plans, photogravures, woodcuts or other illustrations; and no such report shall be printed unless it bears the certified approval of the state board of publication.

No report to be printed without the approval of the state board of publication.

SECTION 7. Sections ten and eleven of chapter one hundred and seven of the Revised Laws, section six of chapter nine of the Revised Laws, and so much of section seven of said chapter as refers to maps, plans, photogravures, woodcuts or other pictorial illustrations, are hereby repealed.

Repeal.

Acts of 1905, Chapter 138.

An Act relative to the Number of Copies of the Annual Report of the Board of Railroad Commissioners.

SECTION 1. There shall be printed annually forty-five hundred copies of the annual report of the board of railroad commissioners, of which twenty-two hundred and fifty shall be bound without returns.

Report of board of railroad commissioners.

SECTION 2. So much of section seven of chapter nine of the Revised Laws, relating to the number of copies of the annual report of the board of railroad commissioners as is inconsistent herewith is hereby repealed.

Repeal.

[Approved March 7, 1905.]

Acts of 1913, Chapter 784, § 9.

SECTION 9. The commission may appoint a counsel to the commission, and such attorneys as it may deem advisable, for such terms of office or employment and at such salaries as it may deem proper, who shall in the conduct of litigation and court proceedings act under the direction of the attorney-general. . . . The commission may expend such sums to procure opinions, advice, plans, surveys, appraisals, audits, examinations, statistics, information, apparatus, instruments, books, tables, maps, drawings, supplies and sundries, and for travel within or without the commonwealth and expense incidental thereto as it may from time to time deem requisite in the performance of its duties. The commission may, from any appropriations authorized by the general court for the use of the commission, expend such sums as it deems necessary in the performance of its duties under the provisions of this act. . . . The commission may assign to all officers and employees by it appointed or employed such functions and such rank as it shall from time to time deem advisable; but everything done by any such officer or employee shall be subject to the control of, and revision by, the commission. The commission may from time to time cause to be made a compilation of the statutes of this commonwealth relating to common carriers, with annotations.

Counsel, appointment, etc.

Expenses for travel, etc.

Compilation of statistics of statutes relating to common carriers.

Acts of 1905, Chapter 211, § 1.

SECTION 1. The fiscal year of all offices, departments, boards, commissions, hospitals, asylums, charitable, penal and reformatory institu-

The fiscal year for the common-

wealth to
begin De-
cember 1, etc.

tions of the commonwealth shall begin with the first day of December and end with the following thirtieth day of November, and all books and accounts therein shall be kept by fiscal years as herein established, and the annual reports of all officers, trustees, boards and commissions, except the report of the insurance commissioner and except those reports otherwise provided for in this act, shall be made to the governor and council, or to the general court, as now required by law, except that they shall be made on or before the third Wednesday in January, anything in any general or special statute now existing to the contrary notwithstanding. . . .

Duties of
board.
1869, 408,
§§ 2, 5.
1874, 372, § 7.
P. S. 112, § 14.
R. L. 111, § 12.
1906, 267,
[Op. A. G.
638.]
See 1908, 495;
1911, 290.

SECTION 6. The board shall have the general supervision of all railroads and railways; and shall examine the same; and the commissioners shall keep themselves informed as to the condition of railroads and railways and the manner in which they are operated with reference to the security and accommodation of the public, and as to the compliance of the several railroad corporations and street railway companies with their charters and the laws of this commonwealth. The board may from time to time require railroad corporations and street railway companies to install and maintain at such places upon the railroad or street railway premises as it shall designate such block or other signals or devices as it shall approve for the purpose of safeguarding public travel. The supreme judicial court shall have jurisdiction in equity to enforce compliance with any order issued by the board under authority of this section.

Acts of 1911, Chapter 755.

An Act to increase the Powers of the Board of Railroad Commissioners.

To increase
the powers
of the board
of railroad
commissioners.

SECTION 1. Whenever the board of railroad commissioners, hereinafter called the board, shall be of opinion, after a hearing had upon its own motion or upon complaint, that the rates, fares or charges or any of them, demanded, exacted, charged or collected by any person, firm, association, company or corporation now or hereafter subject to its jurisdiction, and hereinafter called a carrier, for the transportation of persons or property within the commonwealth, or the regulations or practices of such carrier affecting such rates, are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law, or that the rates, fares or charges or any of them chargeable by any such carrier are insufficient to yield reasonable compensation for the service rendered, and are unjust and unreasonable, the board, with due regard among other things to a reasonable return upon the value of the carrier's property, shall determine the just and reasonable rates, fares and charges to be charged for the service to be performed, and shall recommend the same by order to be served upon such carrier.

To order
reasonable
regulations
concerning the
just and
adequate
facilities for
transportation;
etc.

SECTION 2. Whenever the board shall be of opinion, after a hearing had upon its own motion or upon complaint, that the regulations, practices, equipment, appliances or service of any such carrier in respect to transportation of persons or property within the commonwealth are unjust, unreasonable, unsafe, improper or inadequate, the board shall determine the just, reasonable, safe, adequate and proper regulations, practices, equipment, appliances and service thereafter to be in force, to be observed and to be used in such transportation of persons and property, and shall recommend the same by order to be served upon such carrier.

SECTION 3. Rates and facilities fixed and determined by statute shall not be revised or regulated by the board.

Rates and facilities.

SECTION 4. The board shall have all powers necessary or proper to enable it to carry out the provisions of this act. It shall have authority to employ such experts and other assistants as it shall deem wise in examining into the rates, facilities and financial condition of any carrier. It may expend not more than five thousand dollars annually for the salary and expenses of an accountant, and may expend such further sums each year as are appropriated by the legislature.

Powers of the board, etc.

SECTION 5. The attorney-general, either in person or by one of his assistants, shall not only advise the board and act as its counsel upon its request, but shall also appear before the board in any matter, either upon his own motion or at the request of any individual, when in the opinion of the attorney-general or of the board the interests of the commonwealth or the public demand.

The attorney-general to advise the board.

SECTION 6. Any investigation, inquiry or hearing which the board has power to undertake or to hold may be undertaken or held by or before any commissioner, and decisions of the board and every order made by a commissioner, when approved and confirmed by the board and ordered filed in its office, shall be and be deemed to be the order of the board. Every order of the board shall continue in force unless the same shall be limited, suspended, modified or set aside by the board or shall be suspended or set aside by any court of competent jurisdiction.

Investigation and inquiry. Amended by 1913, 784, § 6.

SECTION 7. Nothing in this act shall be construed as limiting the powers of the board to act under section nine of Part I of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six.

The powers of the board not limited.

SECTION 8. This act shall take effect upon its passage. [Approved July 28, 1911.]

[See 1911, 755, § 6, above.]

Acts of 1913, Chapter 784, § 6.

SECTION 6. Three members of the commission shall constitute a quorum. No contested matter upon which a public hearing by said commission is required by law shall be heard or decided by less than a quorum of the commission. So much of section six of chapter seven hundred and fifty-five of the acts of the year nineteen hundred and eleven as authorizes a hearing upon a contested matter to be held before one commissioner, and an order in any such matter made by one commissioner to be confirmed by the commission with the same effect as an order of the commission, is hereby repealed.

Quorum. 1911, 755, § 6 amended.

Acts of 1913, Chapter 784, § 23.

SECTION 23. Whenever the commission shall be of opinion, after a hearing had upon its own motion or upon complaint, that the regulations, practices, equipment, appliances or service of any common carrier, now or hereafter subject to its jurisdiction, are unjust, unreasonable, unsafe, improper or inadequate, the commission shall determine the just, reasonable, safe, adequate and proper regulations and practices, thereafter to be in force and to be observed, and the equipment, appliances and service thereafter to be used and shall fix and prescribe the same by order to be served upon every common carrier to be bound thereby. The commission shall have power after such a hearing to order from time to time that a railroad company shall operate its lines, of standard gauge, or such parts thereof as the commission shall prescribe, by electric power instead of by steam power, and in its order shall prescribe the time within which the work of electrification shall be done. Before making such order, the

Hearings upon service, etc.

commission shall consider the relative importance and necessity of the changes in any specific regulations, practices, equipment and appliances proposed to be included therein and of other changes which may be brought to its attention in the course of such hearing, the financial ability of the carrier to comply with the requirements of the order, and the effect of the carrier's compliance therewith, upon its financial ability to make such other changes, if any, as may be deemed by the commission of equal or greater importance and necessity in the performance of the service which the carrier has professed to render to the public. It shall be the duty of every such common carrier to observe and obey every requirement of every such order so served upon it, and to do everything necessary or proper in order to secure absolute compliance with and observance of every such order by all its officers, agents and employees.

Hearings upon service, etc., in respect of certain steamship and express companies. 1903, 173. 1904, 265. 1906, 266. 201 *Mass.* 579. See 1908, 699, page 16.

SECTION 7. The board shall, in respect of steamship companies serving as common carriers throughout the year between two or more ports of this commonwealth, perform the same duties, including the regulation of rates for transporting freight or passengers, and including other matters affecting the security or convenience of the public, which the said board is now or may hereafter be empowered to perform in the case of railroads or railways. The board may, upon the complaint of any party interested, exercise over express companies, firms and persons doing an express business upon railroads or railways in this commonwealth supervisory powers with regard to the character of accommodations and service furnished, and the reasonableness of rates charged.

Revised Laws, Chapter 70.

OF COMMON CARRIERS AND EXPRESS COMPANIES.

Discrimination by carriers forbidden. 1869, 252, § 1. P. S. 73, § 1.

SECTION 1. Every common carrier of merchandise or other property shall receive, transport and forward all property offered for such purposes by other such carriers as promptly, faithfully and impartially, at as low rates of charge, and in a manner and on terms and conditions as favorable to the carrier offering such property, as he on the same day and at the same place receives, forwards and transports, in the ordinary course of business, property of a like description offered by persons other than such carriers. Such carrier shall not discriminate against any particular person or corporation or subject him or it to any undue or unreasonable prejudice or disadvantage. The supreme judicial court or the superior court shall have jurisdiction in equity to enforce the provisions of this section.

Penalty. 1869, 252, § 2. P. S. 73, § 2.

SECTION 2. Every such carrier who wilfully neglects or refuses to comply with the provisions of the preceding section shall forfeit for every offence not less than fifty nor more than five hundred dollars, to the person offering the property for transportation.

General agent for foreign expresses. 1871, 371, § 1. P. S. 73, § 3. 1884, 330. 196 *Mass.* 603, 627.

SECTION 3. Every association of persons who are not inhabitants of this commonwealth which does an express business herein shall in writing appoint a person, who is a citizen and a resident thereof, to be a general agent, upon whom all lawful processes against such persons may be served with like effect as if served on said persons; and said writing or power of attorney shall contain an agreement on the part of the persons making the same that the service of any lawful process against it or them on said general agent shall be of the same legal force and validity as such service on said persons or any of them. The power of attorney shall be

filed in the office of the secretary of the commonwealth, and copies certified by him shall be taken as sufficient evidence and proof thereof. Such agency shall be continued so long as such express business is done in this commonwealth, and the power of attorney shall not be revoked until a similar power is given to another person and filed as aforesaid.

SECTION 4. Such general agent shall give bond to the treasurer and receiver general, with one or more sureties to be approved by him, in the sum of two thousand dollars, conditioned that he will accept service of all lawful process against his principal.

General agent for foreign expresses to give bond. 1871, 371, § 2. P. S. 73, § 4.

SECTION 5. No person shall act for more than thirty days as such general agent unless the provisions of the two preceding sections have been complied with; and whoever so acts without such compliance shall forfeit not more than five hundred dollars for each offence.

Penalty on agent of delinquent company. 1871, 371, § 3. P. S. 73, § 5.

SECTION 6. If the proprietor of a steamboat or stage coach or a common carrier of passengers, except a railroad corporation or street railway company, by reason of his or its negligence, or by reason of the unfitness or gross negligence or carelessness of his or its servants or agents, causes the death of a passenger, he or it shall be liable in damages in the sum of not less than five hundred nor more than five thousand dollars which shall be assessed with reference to the degree of culpability of the proprietor or common carrier liable, or of his or its servants or agents, and shall be recovered in an action of tort, commenced within one year after the injury which caused the death, by the executor or administrator of the deceased, one-half to the use of the widow and one-half to the use of the children of the deceased; or, if there are no children, the whole to the use of the widow; or, if there is no widow, the whole to the use of the next of kin.

Remedy for negligence of common carrier. 1840, 80. G. S. 160, § 34. 1881, 199. §§ 3, 5, 6. P. S. 73, § 6. 135 Mass. 448. 144 Mass. 425. 179 Mass. 329. 188 Mass. 371.

SECTION 7. Whoever, with intent to defraud or injure in his business a person licensed by any city or town as a carrier of goods for hire, takes from the order box of such carrier or effaces or destroys any order to or direction for such carrier to call for and receive goods to be transported by such carrier, or appropriates any such order or direction or makes use of the information derived therefrom for the purpose of executing the same, or for the purpose of transporting any goods or receiving the hire therefor, shall be punished by a fine of not more than twenty-five dollars.

Protection of business of carriers. 1895, 481.

SECTION 8. The provisions of sections two hundred and thirty-three, two hundred and forty-one and two hundred and sixty-nine of chapter one hundred and eleven shall apply to steamboat lines within the commonwealth and to persons who are engaged or who desire to engage in the express business thereon.

Provisions applicable. 1894, 469, § 4. 1906, 463, Part II, §§ 189, 197, 246. Now, 1906, 463, Part II, 189, 197, 246.

SECTION 8. If, in the judgment of the board, a railroad corporation or street railway company has violated a law, or neglects in any respect to comply with the terms of the act by which it was created or with the provisions of any law of this commonwealth, it shall give notice thereof in writing to such corporation or company; and thereafter, if such violation or neglect continues, shall forthwith present the facts to the attorney-general for his action.

Board to secure observance of laws. 1869, 408, § 3. 1870, 307, § 5. 1874, 372, § 8. P. S. 112, § 15. R. L. 111, § 14. 197 Mass. 199.

Acts of 1913, Chapter 784, § 26.

SECTION 26. Every order of the commission shall be served upon every person or corporation to be affected thereby, either by personal delivery of a certified copy thereof, or by mailing a certified copy thereof,

Orders of the commission, how served.

Acknowledg-
ment of receipt
of orders.

Acceptance,
etc.

Notice of
necessary
repairs, etc.
1869, 408, § 3.
1874, 372, § 9.
P. S. 112, § 16.
R. L. 111, § 15.
1904, 357, § 1.
*Amended by
1909, 343.*

in a sealed package with postage prepaid, to the person to be affected thereby or, in the case of a corporation, to any officer or agent thereof upon whom a summons may be served under the laws of this commonwealth. It shall be the duty of every person and corporation to notify the commission forthwith, in writing, of the receipt of the certified copy of every order so served, and in the case of a corporation such notification shall be signed and acknowledged by a person or officer duly authorized by the corporation to admit such service. Within a time specified in the order of the commission every person and corporation upon whom it is served shall, if so required in the order, notify the commission in like manner whether the terms of the order are accepted and will be obeyed. Every order of the commission shall take effect at a time therein specified and shall continue in force either for a period which may be designated therein or until changed or abrogated by the commission.

SECTION 9. If the board is of opinion that repairs are necessary upon any railroad or railway, or that an addition to its rolling stock, or an addition to or change or *relocation* of its stations or station houses or waiting rooms, or a change in its rates of fares for transporting freight or passengers, or in the mode of operating its railroad or railway and conducting its business, is reasonable and expedient in order to promote the security, convenience and accommodation of the public, it shall in writing inform the corporation or company of the improvements and changes which it recommends should be made.

Acts of 1901, Chapter 330.

An Act relative to the Powers and Duties of the Board of Railroad Commissioners.

Powers and
duties of
board of rail-
road commis-
sioners to
apply to
station of
Boston
Terminal
Company, etc.

SECTION 1. All general laws defining the powers and duties of the board of railroad commissioners in reference to the stations and premises of railroad companies, and to the operation of trains in connection therewith, shall, except as otherwise provided in chapter 516 of the year eighteen hundred and ninety-six, be applicable to the station and premises of the Boston Terminal Company, and to the operation of trains in connection therewith.

SECTION 2. This act shall take effect upon its passage.

Acts of 1903, Chapter 381.

An Act relative to the Laying out and Construction of Northern Avenue and Sleeper Street in the City of Boston.

Laying out
and construct-
ing of Northern
avenue and
Sleeper street
in Boston.

SECTION 1. . . . Said avenue and street shall be highways: provided, however, that the manner of constructing and operating the railroad track in and across the same, and the highway traffic and travel upon and other uses of Northern avenue shall be regulated and the location of tracks along said avenue and street shall be determined by the board of railroad commissioners, who, having due regard to the intent and purpose hereof, shall in writing from time to time prescribe the regulations, and may change or modify the same.

Acts of 1909, Chapter 343.

An Act to authorize the Board of Railroad Commissioners to recommend Relocations of Stations of Railroad Corporations and Street Railway Companies.

Section nine of Part I of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby amended by inserting after the word "change", in the third line, the words: — or relocation, — so as to read as follows: — *Section 9. [For § 9 as amended, see above.]*

1906, 463,
Part I, § 9,
amended.
See 1911,
755, § 7.

SECTION 10. Upon the application of the board of aldermen of a city or the selectmen of a town within which a part of any railroad or railway is located, alleging grounds of complaint, the board shall examine the condition and operation of such railroad or railway; and if, upon the petition in writing of twenty or more legal voters in such city or town to the board of aldermen or selectmen to make such application, they refuse so to do, they shall indorse upon the petition the reason of such refusal, and return it to the petitioners, who may, within ten days thereafter, present it to the board, and it may thereupon make such examination as if called upon by the board of aldermen or the selectmen, first giving to the petitioners and to the corporation or company reasonable notice in writing of the time and place of making such examination. If, upon such examination, it appears to the board that the complaint is well founded, it shall so adjudge, and shall in writing inform the corporation or company which operates such railroad or railway of its adjudication.

Examination
of condition
of road.
1869, 408, § 4.
1874, 372, § 10.
P. S. 112, 17.
R. L. 111, 16.
1904, 357, 2.

SECTION 11. The board shall investigate the causes of any accident on a railroad or railway which results in loss of life; and of other accidents which, in its judgment, require investigation.

Investigation
of accidents.
1869, 408, § 14.
1873, 98, § 1.
1874, 372, § 11.
P. S. 112, 15.
R. L. 111, 17.

SECTION 12. An employee may make complaint in writing to the board of a defect in the ways, works; machinery or appliances of a railroad or railway, and the name of the complainant shall not be divulged.

Complaints by
employees.
1894, 535, 6.
1897, 376, 3.
R. L. 111, 18.

SECTION 13. Every railroad corporation and street railway company shall, upon request, furnish to the board any information which may be required by it relative to the condition, management and operation of the railroad or railway, and copies of all leases, contracts and agreements for transportation with express companies or otherwise to which such corporation or company is a party, and also with the rates for transporting freight and passengers upon its railroad or railway and other railroads or railways with which its business is connected.

Information
to board by
railroads and
street railways.
1869, 408, 6.
1874, 372, 12.
P. S. 112, 19.
R. L. 111, 19.

SECTION 14. No request or advice of the board shall in any manner impair the legal duties and obligations of a railroad corporation or street railway company or its legal liability for the consequences of its acts or of the neglect or mismanagement of any of its agents or servants.

Effect of
advice of
board.
1869, 408, 12.
1874, 372, 13.
P. S. 112, 20.
R. L. 111, 20.

Annual examination of books and accounts. 1876, 185, P. S. 112, 21. R. L. 111, ^{sections} 2, 21.

SECTION 15. The board shall from time to time in each year examine the books and accounts of every corporation or company which operates a railroad or railway, and require them to be kept in a uniform manner and upon the system prescribed by the board. Statements of the doings and financial condition of the several corporations and companies shall be prepared and published at such times as the board shall consider expedient.

Other examinations of books and financial condition. 1876, 185, P. S. 112, 4, 22. R. L. 111, ^{sections} 22.

SECTION 16. Upon the application in writing of a director, or of any person or persons who own one fiftieth part of the paid-in capital stock of a corporation or company which operates a railroad or railway, or who own the bonds or other evidences of indebtedness of such corporation or company equal in amount to one fiftieth part of its paid-in capital stock, the board shall examine the books and the financial condition of said corporation or company, and shall cause the result of such examination to be published in one or more daily newspapers in the city of Boston.

Acts of 1913, Chapter 784, § 11.

To examine books, etc. of common carriers.

SECTION 11. The commission may, either through its members or by employees duly authorized by it, examine all books, contracts, records, documents, papers and memoranda of any common carrier, and by subpoena duces tecum compel the production thereof, or of duly verified copies of the same or any of them, and compel the attendance of such witnesses as the commission may require to give evidence at any such examination. The commission may provide for an annual audit by employees duly authorized by it of all the accounts of any common carrier or class of common carriers, whenever it deems such action advisable. Any employee or agent of the commission who divulges any fact or information which may come to his knowledge during the course of any such examination or audit, except in so far as he may be directed by the commission, or by a court or judge, or be authorized by law, shall be guilty of a misdemeanor, and shall be punished by a fine of not more than one thousand dollars.

Annual audit.

Penalty.

Acts of 1913, Chapter 509.

An Act to extend the Authority of the Board of Railroad Commissioners and the Board of Gas and Electric Light Commissioners.

Board of railroad commissioners to examine books, etc., of certain voluntary associations and express trusts.

SECTION 1. The board of railroad commissioners shall have authority by its members or duly authorized employees to investigate and examine the books, accounts, contracts, records and memoranda of the trustees of any voluntary association or express trust under a written instrument or declaration of trust the beneficial interest whereof is divided into transferable certificates of participation or shares, who own or hold the capital stock or any part thereof of a railroad, street railway, electric railroad or elevated railway corporation which is under the supervision of said board, and may require said trustees to furnish such reports and information as the board shall from time to time direct with respect to the relations and dealings between such trustees and any such corporation.

Board of gas and electric light commissioners to examine books,

SECTION 2. In like manner and to the same extent, the board of gas and electric light commissioners shall have authority by its members or duly authorized employees to investigate and examine the books, ac-

counts, contracts, records and memoranda of the trustees of any such voluntary association or express trust who own or hold the capital stock, or any part thereof, of a gas or electric corporation which is under the supervision of said board, and may require such trustees to furnish such reports and information as the board shall from time to time direct with respect to the relations and dealings between such trustees and any such corporation.

etc., of certain voluntary associations and express trusts.

SECTION 3. The board of railroad commissioners shall have authority by its members or its duly authorized employees to investigate and examine the books, accounts, contracts, records and memoranda of any partnership, express trust, voluntary association or corporation which is under the same ownership, control or management as a railroad, street railway, electric railroad or elevated railway corporation subject to the supervision of said board, in respect of the relations and of any contracts and dealings between such railroad, street railway, electric railroad, or elevated railway corporation and such partnership, express trust, voluntary association or corporation, and in relation thereto may require from such partnership, express trust, voluntary association or corporation such reports and information as the board shall from time to time direct.

Board of railroad commissioners to examine books, etc., of certain ownerships, etc., in public service corporations under its supervision.

Reports required.

SECTION 4. In like manner and to the same extent, the board of gas and electric light commissioners shall have authority by its members or duly authorized employees to investigate and examine the books, accounts, contracts, records and memoranda of any partnership, express trust, voluntary association, or corporation which is under the same ownership, control or management as a gas or electric corporation subject to the supervision of said board, in respect of the relations and of any contracts and dealings between such gas or electric corporation and such partnership, express trust, voluntary association or corporation, and in relation thereto may require such partnership, express trust, voluntary association or corporation to furnish such reports and information as the board shall from time to time direct.

Board of gas and electric light commissioners to examine books, etc., of certain ownerships in public service corporations under its supervision.

Reports required.

SECTION 5. A railroad, street railway, electric railroad, elevated railway, gas or electric corporation, or a partnership or corporation or the trustees of an express trust or voluntary association, mentioned or described in the foregoing sections, which refuses or neglects to submit its or their books, accounts, contracts, records and memoranda to the investigation and examination of the board thereto duly authorized as hereinbefore provided, or to furnish such reports and information as the board thereto duly authorized shall from time to time direct and require, shall forfeit not more than five thousand dollars for every such refusal or neglect.

Penalty.

SECTION 6. The supreme judicial court shall have jurisdiction in equity to enforce compliance with the provisions of this act and with all orders of the board of railroad commissioners or of the board of gas and electric light commissioners made under authority of this act.

Supreme judicial court to have jurisdiction in equity to enforce provisions.

SECTION 7. Nothing contained in this act shall be construed as authorizing, requiring or justifying the board of railroad commissioners or the board of gas and electric light commissioners in making any recommendations, rulings or orders with respect to the rates charged or the service furnished by any corporation subject to the supervision of either of said boards, to take into consideration in any respect whatsoever any certificates of participation or shares issued under a declaration of trust and representing the beneficial interest in the stock, bonds, notes or other securities of such corporation, or the investment in such certificates or shares.

Construction of act.

SECTION 8. This act shall take effect upon its passage. [Approved April 21, 1913.]

Board to have access to lists of stockholders. 1876, 185, § 5. P. S. 112, § 23. R. L. 111, § 23. [1 Op. A. G. 278.]

Penalty upon corporations for refusing to submit books, etc. 1876, 185, § 6. P. S. 112, § 24. R. L. 111, § 24.

SECTION 17. The board shall at all times have access to the list of stockholders of every corporation or company which operates a railroad or railway, and may at any time cause the said list or a part thereof to be copied for its information or for the information of the stockholders of such corporation or company.

SECTION 18. A railroad corporation or street railway company which refuses to submit its books to the examination of the board, or unreasonably neglects to keep its accounts in the method prescribed by the board, shall forfeit not more than five thousand dollars for every such refusal or neglect.

Acts of 1908, Chapter 599.

An Act to extend the Authority of the Board of Railroad Commissioners over Persons and Corporations engaged in the Express Business upon Railroads and Railways.

Returns of persons, etc., doing an express business.

SECTION 1. Every person, firm, association or corporation doing an express business upon either a railroad or railway in this commonwealth shall annually, on or before the first Wednesday in November, transmit to the board of railroad commissioners a return of his or its doings for the year ending on the thirtieth day of the preceding September, said return to be under oath of such person or of the financial officer or representative of such firm, association or corporation. The return shall set forth copies of all contracts made during the year with other persons, firms, associations or corporations doing a transportation or express business upon any railroad or railway in the commonwealth, and shall give complete information in reply to the questions presented in the form for such return which shall be prescribed by the board.

Amendment of returns.

SECTION 2. If a return made under the provisions of the preceding section appears to be defective or erroneous, the board shall require the person, firm, association or corporation making it to amend it within fifteen days. A person, firm, association or corporation neglecting to make a return as herein required or to amend it when requested so to do shall forfeit twenty-five dollars for each day during which such neglect continues.

Penalty.

Information to be furnished board.

SECTION 3. Every person, firm, association or corporation doing an express business upon a railroad or railway in this commonwealth shall, upon request, furnish to the board of railroad commissioners full information relative to the character or conduct of such business, the service that is furnished and the rates that are charged, the names of the persons engaged in the business, and the relations existing with any other person, firm, association or corporation conducting a transportation or express business upon a railroad or railway.

Recommendations as to rates, accommodations, etc.

SECTION 4. The board upon its own initiative or upon the request of any person after a public hearing and investigation, if it is of the opinion that a change in the rates charged or accommodations furnished by any person, firm, association or corporation doing an express business upon a railroad or railway in this commonwealth, or in the method in which the business is conducted, is reasonable and expedient, in order to promote the convenience and accommodation of the public, shall in writing inform such person, firm, association or corporation of the change which it recommends should be made. [Approved June 8, 1908.]

Acts of 1913, Chapter 784, § 14.

Valuation, etc.

SECTION 14. The commission may investigate and determine the fair value for any purpose of all the property of any common carrier rendering a public service subject to the supervision of the commission, which

is actually used or useful for the convenience of the public, whenever it deems the ascertainment of such value necessary in order to carry into effect any provision of this act. The commission may at any time on its own initiative make a revaluation of such property. In making any valuation under this section, the commission may have access to and use any books, documents or records in the possession of any department or board of the commonwealth or any political subdivision thereof.

SECTION 19. In all cases investigated and inquiries made by the board and in all proceedings before it, any member thereof may summon witnesses in behalf of the commonwealth and may administer oaths and take testimony. The fees of such witnesses for attendance and travel shall be the same as for witnesses before the superior court, and shall be paid by the commonwealth upon the certificate of the board filed with the auditor.

Commissioners may summon witnesses.
1877, 194, § 1.
P. S. 112, § 25.
1901, 286.
R. L. 111, § 25.

Revised Laws, Chapter 175, § 10.

SECTION 10. A justice of the supreme judicial court or of the superior court, upon the application of a tribunal which is authorized to summon but not to compel the attendance of witnesses and the giving of testimony before it, may, in his discretion, compel the attendance of such witnesses and the giving of testimony before any such tribunal, in the same manner and to the same extent as before said courts.

Enforcement of attendance by courts.
1879, 155.
P. S. 112, § 25.
1883, 195.
1891, 140.
1901, 286.
141 Mass. 307.
175 Mass. 179.

186 Mass. 456.

1904, 343, § 2.

SECTION 20. The board shall prescribe the form for the annual returns to be made by railroad corporations and street railway companies, may, from time to time, make changes and additions in such form, and shall give to the corporations and companies one year's notice of any changes or additions which require an alteration in the method or form of keeping their accounts. It may change the form of returns of railroad corporations to conform to the form of returns required by the interstate commerce commission, if it gives to such corporations one month's notice of such change; and shall annually, on or before the fifteenth day of June, furnish to railroad corporations, and annually, on or before the fifteenth day of September, furnish to street railway companies, blank forms of returns. If a return is defective or appears to be erroneous, the board shall notify the corporation or company to amend it within fifteen days. The original of each return or amended return, subscribed and sworn to by the directors, treasurer and chief accounting officer of the corporation or company, shall be preserved in the office of the board.

Board to prescribe forms of returns.
1857, 240, § 4.
G. S. 63, § 145.
1864, 229, § 42.
1870, 307, §§ 3, 4.
1871, 381, § 54.
1874, 372, § 15.
1876, 173.
P. S. 112, § 26;
113, § 59.
1889, 328, § 2.
R. L. 111, § 26.
R. L. 112, § 94.
See 1909, 502, §§ 1, 2.

Acts of 1913, Chapter 784, § 12.

SECTION 12. The commission may from time to time establish and prescribe a system of forms of accounts to be used by the common carriers subject to its supervision, or may classify the said common carriers and prescribe a system of forms of accounts for each class. The accounts of all such common carriers shall be kept in accordance with the forms prescribed. The commission may also in its discretion prescribe the forms

Form of accounts.

of records and memoranda to be kept by such common carriers. The forms of accounts established by the commission and the forms of records and memoranda prescribed by it shall conform as nearly as may be to the similar forms from time to time established and prescribed by the interstate commerce commission.

GRADE CROSSINGS.

Grade crossings regulated.
1864, 229, § 35.
1871, 381, § 46.
P. S. 113, § 40.
1895, 426, § 1.
R. L. 112, § 63.
Supervision by board of crossings.
1892, 228.
R. L. 111, § 27.

SECTION 21. A street railway shall not be constructed across the tracks of a railroad nor shall a railroad be constructed across the tracks of a street railway at the same level therewith without the consent of the board of railroad commissioners.

SECTION 22. In any case in which the consent or approval of the board of railroad commissioners which may be required by law for any crossing at grade is given, said board may, after notice to the parties interested and a hearing, impose conditions, limitations, restrictions and regulations relative to such crossing, its construction and use, and may from time to time change and modify them.

ALTERATION OF CROSSINGS.

Alteration of crossings.
1842, 22.
G. S. 63,
§§ 53, 54.
1872, 262,
§§ 1, 2.
1874, 305,
§§ 1, 3; 372,
§ 96.
P. S. 112,
§ 129.
1885, 194, § 2.
R. L. 111,
§ 134.
1902, 533, § 1.
6 Cush. 424.
116 Mass. 73.
153 Mass. 218.
154 Mass. 410.
164 Mass. 551.
171 Mass. 135.
173 Mass. 12.
174 Mass. 379.
175 Mass. 430.
177 Mass. 511.
178 Mass. 319.
198 Mass. 587.
208 Mass. 307,
309.
Amended by
1908, 542, § 1.
1909, 47, § 1.
See 1908, 266,
§ 5; 372, § 1;
552; 1913, 546,
§ 5.

SECTION 23. If a public way and a railroad cross each other, and the board of aldermen of the city or the selectmen of the town in which the crossing is situated, or the directors of the railroad corporation, or the directors of a street railway company having tracks on the said way are of opinion that it is necessary for the security or convenience of the public that an alteration which does not involve the abolition of a crossing at grade should be made in the crossing, the approaches thereto, the location of the railroad or way, or in a bridge at the crossing, they shall apply to the county commissioners, or, if the crossing is situated, *in whole or in part*, in the city of Boston, to the board of railroad commissioners, who shall, after public notice, hear all parties interested, and, if they decide that such alteration is necessary, shall prescribe the manner and limits within which it shall be made, and shall forthwith certify their decision to the parties and to said board. *This proceeding may include any case where there is need of the rebuilding of a highway bridge or any structural change or renewal for the purpose of strengthening or improving it.* In case any street railway company is authorized to lay and use tracks upon the said way, the said company shall bear such part of the expense of building, *rebuilding, changing, renewing*, repairing or improving a bridge forming a part of said way, or of altering or improving the approaches thereto, as shall be deemed to be just by the commission provided for in sections twenty-five and twenty-six.

Acts of 1908, Chapter 542.

An Act further to define the Duties of County Commissioners in the Alteration of Crossings.

1906, 463,
part I, § 23,
amended.

SECTION 1. Section twenty-three of Part I of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby amended by inserting after the word "board", in the seventeenth line,

the words: — This proceeding may include any case where there is need of the rebuilding of a highway bridge or any structural change or renewal for the purpose of strengthening or improving it, — and by inserting after the word “building”, in the twentieth line, the words: — rebuilding, changing, renewing, — so as to read as follows: — *Section 23.* [For § 23 as amended, see above.]

Alteration of crossings.

SECTION 2. Section twenty-five of Part I of said chapter is hereby amended by inserting after the word “such”, in the sixth line, the words: — bridge, or, — and by inserting after the word “such”, in the twenty-first line, the words: — bridge or crossing and, — so as to read as follows: — *Section 25.* [For § 25 as amended, see below.]

1906, 463, part I, § 25, amended.

Acts of 1909, Chapter 47.

An Act further to define the Duties of County Commissioners in the Alteration of Crossings.

SECTION 1. Section twenty-three of Part I of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six, as amended by section one of chapter five hundred and forty-two of the acts of the year nineteen hundred and eight, is hereby further amended by inserting after the word “situated”, in the twelfth line, the words: — in whole or in part, — so as to read as follows: — *Section 23.* [For § 23 as amended, see above.]

1906, 463, part I, § 23, further amended.

SECTION 2. The board of railroad commissioners shall have jurisdiction of the petition heretofore filed with said board for the alteration and rebuilding of the bridge at the crossing of Mystic avenue over tracks of the Boston and Albany Railroad Company and the Boston and Maine Railroad, therein described as within the city of Boston, notwithstanding the fact that said crossing and said bridge and its abutments and approaches may be located partly in the city of Boston and partly in the city of Somerville, as if section one of this act had been in force at the date of said petition.

SECTION 3. This act shall take effect upon its passage. [Approved February 9, 1909.]

SECTION 24. If it is decided that the location of the railroad or of the way shall be changed, land or other property may be taken therefor according to the provisions of law authorizing the taking of land by railroad corporations or for highways or town ways, as the case may be; and all damages caused by such taking or otherwise shall be assessed in the manner provided in case of the taking of land by railroad corporations, or for highways and town ways, respectively.

Land may be taken and damages assessed.
1874, 305, § 2;
372, § 97.
P. S. 112, § 130.
1885, 194, §§ 2, 3.
R. L. 111, § 135.
171 Mass. 135.
184 Mass. 491.

SECTION 25. A special commission of three disinterested persons, who shall be appointed as provided in the following section, shall determine which party shall carry such decision into effect and which party shall pay the charges and expenses of making such alteration and the future charges for keeping such bridge or crossing and the approaches thereto in repair, as well as the costs of the application to the county commissioners, or the board of railroad commissioners, and of the hearing before said special commission; and it may apportion all such charges, expenses and costs between the railroad corporation, the street railway company having tracks on said way, and the counties,

Award to be made by a special commission.
1872, 262, § 2.
1874, 372, § 98.
1878, 175, § 3.
P. S. 112, § 131.
1885, 194, § 4.
1887, 295.
R. L. 111, § 136.
1902, 533, § 2.
156 Mass. 219.
164 Mass. 311.
184 Mass. 491.
198 Mass. 537.
203 Mass. 506, 507, 508.

Amended by
1908, 542, § 2.
See 1908, 266,
§ 5; 372, § 1;
552.

cities or towns in which said crossing is situated and other cities and towns which may be specially benefited. If a street railway company is authorized to lay and use tracks upon any bridge in a highway which is built or repaired or altered as above provided for, or the approaches to which are altered or improved as above provided for, the said commission shall determine what part of the charges and expenses of making such changes or improvements, or of keeping such *bridge or crossing and* approaches in good condition, shall be paid by the said street railway company.

Special com-
mission, ap-
pointment of.
1872, 262,
§§ 2-4.
1874, 372, § 99.
1875, 231, § 1.
1876, 212.
1878, 175, § 1.
P. S. 112,
§ 132.
1885, 194, § 5.
R. L. 111,
§ 137.
1902, 533, § 3.
184 Mass. 491.
203 Mass. 306.
See 1908, 266,
§ 5; 372, § 1;
552.

SECTION 26. Upon the application of the county commissioners, the board of railroad commissioners, the board of aldermen, the selectmen or the directors of the railroad corporation or of the street railway company for the appointment of such commission, the superior court shall cause notice thereof to be given to the other parties interested fourteen days at least before the time fixed for the hearing; and thereupon, after a hearing, shall appoint such commission, one member of which shall be a member of and designated by the board of railroad commissioners. The special commission shall meet as soon as may be after its appointment, and, after notice to and a hearing of the parties, shall make its award in writing and return the same into said court.

Revision by
jury.
1875, 231,
§§ 2, 3.
1878, 175, § 2.
P. S. 112,
§ 133.
R. L. 111,
§ 138.
148 Mass. 474.
156 Mass. 217.
184 Mass. 491.
See 1908, 266,
§ 5; 372, § 1;
552.

SECTION 27. A party who is aggrieved by said award may, within fourteen days after it has been so returned, apply to the court for a jury to revise and determine any matter of fact found therein; and thereupon the court, after notice to all parties interested, shall order a trial by jury in the same manner as civil cases are tried by jury. The decree of the court upon said award or upon the verdict of a jury shall be final and binding, and said court shall have jurisdiction in equity to enforce compliance therewith, and also to issue and enforce such interlocutory decrees and orders as justice may require.

Recovery after
alteration of
proportion of
expense.
1872, 262, § 5.
1874, 372,
§ 101.
P. S. 112,
§ 134.
R. L. 111,
§ 139.
6 Cush. 424.
See 1908, 266,
§ 5; 372, § 1;
552.

SECTION 28. The party designated for that duty, having carried into effect the decision of the county commissioners, may, in an action of contract, recover of any other party the proportion awarded to be paid by such other party, with interest; and if the party so designated unreasonably neglects or refuses to carry the decision into effect, any other party who is affected by such neglect or refusal may proceed to do it, and may, in an action of contract, recover from each or all of the others the proportion awarded to be paid by him or them, respectively, and from the party so neglecting or refusing, all charges, expenses and costs occasioned thereby.

Revised Laws, Chapter 50, § 14.

Chapter appli-
cable to rail-
road crossings.
1884, 280.

SECTION 14. The provisions of this chapter shall apply to any alteration of a highway, townway, bridge or its approaches, which are made in pursuance of sections one hundred and thirty-four to one hundred and thirty-nine, inclusive, of chapter one hundred and eleven. [Now 1906, 463, Part I, §§ 23-28.]

Acts of 1908, Chapter 372.

An Act relative to Proceedings for the Abolition of Grade Crossings.

SECTION 1. The attorney-general is hereby authorized to employ a competent civil engineer at an expense not exceeding five thousand dollars in any one year, who shall under his direction examine the plans submitted to commissioners for the abolition of grade crossings, the actual work of construction, and the accounts of expenditures submitted to auditors therein, and shall perform such other duties in connection with proceedings for the abolition of grade crossings as may be assigned to him.

Engineer to examine grade crossing plans, etc.
See 1911, 214.

SECTION 2. Reports of commissioners appointed under the provisions of section twenty-nine of Part I of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six, to abolish grade crossings, and decrees of court affirming the same, may be filed and recorded in the registries of deeds for the several counties without the payment of any fee therefor.

Reports to be filed without fee.
Amended 1909, 429.

SECTION 3. This act shall take effect upon its passage. [Approved April 8, 1908.]

Acts of 1909, Chapter 429.

An Act relative to Proceedings for the Abolition of Grade Crossings.

SECTION 1. Section two of chapter three hundred and seventy-two of the acts of the year nineteen hundred and eight is hereby amended by inserting after the word "filed", in the fifth line, the words: — and recorded, — so as to read as follows: — *Section 2.* Reports of commissioners appointed under the provisions of section twenty-nine of Part I of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six, to abolish grade crossings, and decrees of court affirming the same, may be filed and recorded in the registries of deeds for the several counties without the payment of any fee therefor.

1908, 372, amended.

SECTION 2. This act shall take effect upon its passage. [Approved May 21, 1909.]

Reports recorded without fee.

ABOLITION OF GRADE CROSSINGS.

SECTION 29. The board of aldermen of a city or the selectmen of a town in which a public or private way and a railroad cross each other at grade, the directors of the railroad corporation, or the directors of a street railway company having a location in the part of such public way where the crossing exists, or, upon instructions from the governor and council given after notice to parties interested and a hearing, the attorney-general, may file a petition in the superior court, stating that the petitioners are of opinion that it is necessary for the security and convenience of the public that an alteration should be so made in such crossing, in the approaches thereto, in the location of the railroad or public or private way, or in the grades thereof, as to avoid a crossing at grade, or that such crossing should be discontinued with or without building a new way in substitution therefor. Said court shall thereupon have jurisdiction in equity, after notice by the petitioners to the board of railroad commissioners of the entry of such petition, and after such notice by advertisement or otherwise as said court shall order and

Commission to abolish grade crossings.
1885, 194, § 1.
1890, 428, § § 1, 11.
1891, 262.
1894, 216.
1897, 264.
R. L. 111, § 149.
1902, 440, § 1.
153 Mass. 161, 228.
154 Mass. 411.
158 Mass. 300.
161 Mass. 259.
175 Mass. 430.
185 Mass. 160.
198 Mass. 536.
200 Mass. 230.
206 Mass. 208.
207 Mass. 59, 61.
209 Mass. 306.
213 Mass. 571.
1908, 372, § 2.
1909, 429.

a hearing, in its discretion, to appoint a commission of three disinterested persons. Such commission appointed after the passage of this act, shall, if the parties so agree, consist of the members of the board of railroad commissioners, and they shall serve without compensation other than their official salaries; and no consent shall be required of them as the board of railroad commissioners to their decisions as such commission under the provisions of section thirty-six. Upon all petitions hereafter filed, and upon all now pending on which no commission has been appointed, for the abolition, discontinuance or alteration of grade crossings, any street railway company having a location in the part of the public way where the crossing exists, shall be made a party and entitled to be heard as such.

Costs.
1902, 298, § 1.
213 Mass. 571.

SECTION 30. A party bringing a petition under the provisions of the preceding section shall be entitled to have taxed as costs as in other civil cases the fees for service and cost of publication of such petition, the fees for entry of the same in the superior court, together with all costs of hearing before the superior or supreme judicial court, or before any auditor or master appointed by said courts.

Same.
1902, 298, § 2.
213 Mass. 571.

SECTION 31. A party incurring the expense of making plans required by a commission appointed under section twenty-nine, or for use in the superior or supreme judicial court concerning any grade crossing, the abolition, discontinuance or alteration of which is petitioned for, may in the discretion of the court have the cost of such plans allowed.

Payment.
1905, 408, § 1.
213 Mass. 571.

SECTION 32. The fees and expenses of the commission appointed under the provisions of section twenty-nine, after having been approved by a justice of the superior court, shall be paid, in the first instance, by the railroad corporation, but the fees and expenses so paid, including the costs and expenses specified in the two preceding sections, shall thereafter be apportioned to and paid by the respective parties as provided by section thirty-four.

Petition may embrace several crossings, etc.
1890, 428, §§ 2, 8.
1891, 33, § 1.
R. L. 111, § 150.
213 Mass. 571.

SECTION 33. A petition under the provisions of section twenty-nine may include several crossings, or several railroads crossing at or near the same point, or by order of the court two or more petitions may be consolidated and heard as one. Service of such petition and of all notices or processes thereunder may be made upon the commonwealth by serving upon the attorney-general personally, or by leaving in his office an attested copy thereof.

Commission to prescribe the alterations.
1890, 428, § 3.
1891, 33, § 2.
1894, 216.
1897, 264.
R. L. 111, § 151.
1902, 440, § 2.
153 Mass. 576.
161 Mass. 33.
169 Mass. 495.
172 Mass. 5, 117.
202 Mass. 5.

SECTION 34. The commission appointed under the provisions of section twenty-nine shall meet at once, and if, after notice and a hearing, it decides that the security and convenience of the public require the alterations to be made, it shall prescribe the manner and limits thereof, and shall determine which of the parties shall do the work, or shall apportion the work to be done between each of the railroad corporations and the city or town. The railroad corporations shall pay sixty-five per cent of the total actual cost of the alterations as aforesaid, including therein

in addition to the cost of construction the actual cost to the street railway company of changing its railway and location to conform to the decree of the court, the cost of the hearing, the compensation of the commissioners and auditors and all damages, except as otherwise provided. Said commission may, subject to a right of appeal to the superior court by the street railway company or by the commonwealth for a revision by a jury of the amount of such assessment, if a claim therefor is filed in the clerk's office of said court within thirty days after the making of such assessment, assess upon any street railway company made a party to the proceedings such percentage of said total cost, not exceeding fifteen per cent thereof, as may, in the judgment of said commission be just and equitable; and such assessment, as confirmed by the court, shall be in lieu of any assessment or contribution required by any special act or grant of location. The remainder of said total cost shall be apportioned by the commission between the commonwealth and the city or town in which the crossing or crossings are situated, but not more than ten per cent of said total cost shall be apportioned to such city or town. The commission shall equitably apportion the sixty-five per cent to be paid by the railroad corporation between the several railroads which may be parties to the proceedings. If the crossing was established after the twenty-first day of June in the year eighteen hundred and ninety, no part of said cost shall be charged to the commonwealth; and such part thereof as becomes thereby unapportionable shall be borne by the railroad corporation, the street railway company, if any, and the city or town, in addition to the other amounts payable by them, in such proportions as the commission shall determine. If the crossing is of a railroad and a private way, and no crossing of a public way is abolished in connection therewith, the entire cost as aforesaid shall be paid by the railroad corporation. Whenever in any case in which a street railway company has been required to contribute to the expense of abolishing a grade crossing, any of its locations shall be so changed or revoked by any board of aldermen or selectmen without its consent as to render impossible, or in the opinion of the board of railroad commissioners unprofitable, the further exercise of the privilege of operating its railway in the part of the public way where such grade crossing has been abolished, the amount contributed by such company to the expense of abolishing such grade crossing shall be ascertained by the board of railroad commissioners, and certified to the treasurer of the commonwealth, who shall pay the same to the company from the treasury of the commonwealth; and any amount so received by the company shall be expended only for such construction or equipment purposes as the board of railroad commissioners shall approve.

203 Mass. 310.
206 Mass. 211.
213 Mass. 571.
See 1910, 493;
1911, 486, § 2.

Acts of 1910, Chapter 498.

An Act relative to the Construction of Highways where Grade Crossings are abolished.

Whenever a grade crossing is abolished upon a state highway, county way, or way which has been petitioned for as a state highway, the said highway or way shall be so constructed that there shall be a clear view in each direction for at least one hundred and fifty feet from the centre of the said highway or other way where the same passes over or under the railroad or railway, unless the proposed plan for the abolition of the grade crossing is approved by the Massachusetts highway commission. [Approved May 7, 1910.]

Assessment upon, etc., street railway company to be deemed part of the value of its property, etc.
1902, 440, § 7.
213 Mass. 571.

SECTION 35. The amount of any assessment upon or contribution by a street railway company toward the cost of abolishing a grade crossing shall be deemed and taken in all proceedings thereafter as a part of the value of its property for street railway purposes; and such company may issue stock or bonds to such amount as the board of railroad commissioners shall, subject to the laws relating to the issue of stocks and bonds by street railway companies, approve as reasonably necessary to provide for the payment of such assessment or contribution.

Finding of commission.
Contents.
Effect.
1890, 428, § 4.
1892, 312.
1894, 216.
1897, 264.
R. L. 111,
§ 152.
1902, 440, § 3.
1905, 408, § 2.
163 Mass. 356.
169 Mass. 495.
171 Mass. 228.
200 Mass. 230.
202 Mass. 4,
596.
206 Mass. 211.
213 Mass. 571.
See 1911, 486,
§ 3.

SECTION 36. The commission shall specify what part, if any, of an existing public or private way shall be discontinued, the grade for the railroad and the way, the changes to be made in the location and grades of the street railway in such public way, the general method of construction and what land or other property it considers necessary to be taken, and may provide for the taking of an easement in land adjoining the location of a public or private way or of a railroad, consisting of a right to have the land of the location protected by having the surface of such adjoining land slope from the boundary of the location in a manner specified by the commission, but if such decision involves a change in the grade of the railroad the consent of the board of railroad commissioners to such change shall first be obtained. Said commission shall forthwith return its decision to the superior court, the decree of which, confirming such decision, shall be final and binding. If the commission decides that the location of the street railway shall be changed, the decree of the court confirming such decision shall establish the location as thus changed. If the commission decides that the location of the railroad or of the public or private way shall be changed, the decree of the court confirming such decision shall constitute a taking of the specified land, easement or other property; and the clerk of said court shall, within thirty days after such decree, cause a copy of the decision and decree to be filed with the county commissioners of the county or counties in which the land or other property taken or the land subject to the easement taken and the crossing are situated, to be recorded in the registry of deeds for the counties and districts in which such

lands, property and crossings are situated, and to be filed with the auditor of the commonwealth. Said taking shall be a taking by the city or town if the land or easement is to be used for or in connection with a public way, or by the railroad corporation if the land or easement is to be used for or in connection with a private way or by the railroad corporation. An easement taken under the provisions of this section may be abandoned or released by the city, town or railroad corporation for which the same was taken.

SECTION 37. All damages which may be sustained by any person in his property by the taking of land for or by the alterations of the grade of a public way, or by an abutter thereon by the discontinuance of such public way, to the same extent as damages are recoverable by abutters on ways discontinued by towns, or by the taking of an easement in land adjoining a public way, shall primarily be paid by the city or town; and all damages which may be caused by the taking of land for the railroad or by the change or discontinuance of a private way, or by the taking of an easement in land adjoining a private way or a railroad location in connection with the abolition of a grade crossing shall primarily be paid by the railroad corporation; and all damages which may be sustained by any person by the abolition of private ways, except as hereinbefore provided, shall be entirely paid by the railroad corporation. *Any amount paid by way of damages by either the city or town or the railroad corporation primarily liable therefor shall be subject to investigation by the auditor, unless such settlements are assented to in writing by all parties to the proceeding, as provided in section thirty-nine.* If the parties interested cannot agree upon said damages, any party may have the damages determined by a jury in the superior court for the county in which the property and crossing are situated, on petition, brought within one year after the time the property is entered upon and work actually begun thereon, in the same manner as damages may be determined which are caused by the taking of land for the locating of railroads and the laying out or discontinuance of public ways, respectively, in such city or town; but all expense which results from the necessary relocating or changing of streams and water courses forming the natural drainage channels of the territory in which alterations of grades are authorized and of sewers, drains and pipes therein owned and operated by municipal corporations shall be primarily paid by said city or town, *and it shall be the duty of the railroad company where there has been a taking for railroad purposes, and of the city or town or county commissioners where there has been a taking for the location or alteration of a public way or a taking of an easement in land adjoining a public way, before any entry is made or any work is actually begun upon such property, to give to the owner thereof notice in writing specifying the date upon which such entry is to be made and work is to be actually begun thereon, and for the purpose of determining the*

Damages.
1890, 428, § 5.
1891, 123.
1894, 216.
1897, 264.
1898, 200.
1900, 463.
R. L. 111,
§ 153.
1903, 478, § 1.
1905, 408, § 3.
162 Mass. 170.
164 Mass. 354.
168 Mass. 516.
171 Mass. 228,
494.
172 Mass. 180.
173 Mass. 432.
175 Mass. 246.
176 Mass. 101.
179 Mass. 520.
185 Mass. 160.
199 Mass. 294.
202 Mass. 2, 4,
598, 601.
203 Mass. 11,
375.
209 Mass. 306.
213 Mass. 571.
Amended by
1908, 390, § 1;
1911, 486,
§§ 1, 2.

time within which a petition for damages may be brought the date so specified shall be deemed to be the time when the property is entered upon and work is actually begun thereon and shall be a part of the actual cost of the alterations specified in section thirty-four. A party who recovers damages in such proceedings shall also recover costs as in other civil cases, and the court may in its discretion allow, as a part of such costs, the reasonable expenses incurred for surveys and plans.

Acts of 1908, Chapter 390.

An Act relative to the Powers and Duties of Auditors in Proceedings for the Abolition of Grade Crossings.

1906, 463,
part I, § 37,
amended.
Amended, 1911,
486, §§ 1, 2.

SECTION 1. Section thirty-seven of Part I of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby amended by inserting after the word "corporation", in the seventeenth line, the words: — Any amount paid by way of damages by either the city or town or the railroad corporation primarily liable therefor shall be subject to investigation by the auditor, unless such settlements are assented to in writing by all parties to the proceeding, as provided in section thirty-nine, — so as to read as follows: — *Section 37. [For § 37 as amended, see above.]*

Damages.

Acts of 1911, Chapter 486.

An Act relative to Certain Claims against the Commonwealth in Connection with the Abolition of Grade Crossings.

1906, 463, § 37,
part I, etc.,
amended.
Taking of
land for certain
purposes.

SECTION 1. Section thirty-seven of Part I of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six, as amended by section one of chapter three hundred and ninety of the acts of the year nineteen hundred and eight, is hereby further amended by inserting after the word "town", in the thirty-first line, the words: — and it shall be the duty of the railroad company where there has been a taking for railroad purposes, and of the city or town or county commissioners where there has been a taking for the location or alteration of a public way or a taking of an easement in land adjoining a public way, before any entry is made or any work is actually begun upon such property, to give to the owner thereof notice in writing specifying the date upon which such entry is to be made and work is to be actually begun thereon, and for the purpose of determining the time within which a petition for damages may be brought the date so specified shall be deemed to be the time when the property is entered upon and work is actually begun thereon.

Claims for
damages, etc.

SECTION 2. In any case arising under the provisions of section thirty-seven of Part I of said chapter four hundred and sixty-three, as amended by section one of chapter three hundred and ninety of the acts of the year nineteen hundred and eight, where any person who sustains damage to his property in the manner therein specified fails to bring a petition within one year after the time when the property is entered upon and work is actually begun thereon, the attorney-general may, in his discretion, join with the other parties interested in a settlement of the claim of such person; and the proportion of the amount agreed upon in settlement thereof which would be chargeable to the commonwealth under the provisions of section thirty-four of Part I of said chapter shall be paid by the commonwealth as if it were a part of the actual cost of the work required to be done under the provisions of said section thirty-four.

SECTION 3. No petition now pending in the superior court or which may be filed prior to the first day of January in the year nineteen hundred and twelve for the assessment of damages to property sustained by any person under the provisions of section thirty-six of Part I of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six, or under any other provision of law authorizing the taking of land in connection with the abolition of grade crossings, shall be dismissed in said court solely on the ground that said petition was not brought within one year after the time property was entered upon or work was actually begun under the decree for the abolition of such crossings. [Approved May 27, 1911.]

Certain petitions may be dismissed.

SECTION 38. After the completion of the work, the expense of maintenance and repair shall be paid as follows: if the public way crosses the railroad by an overhead bridge, the framework and flooring of the bridge and its abutments shall be maintained and kept in repair by the railroad corporation, [and the surface of the bridge and its approaches] but the approaches of the bridge and, if said flooring has a wearing surface, consisting of an upper planking, paving or other surface material, such wearing surface of the bridge shall be maintained and kept in repair by the city or town in which they are situated; if the public way passes under the railroad, the bridge and its abutments shall be maintained and kept in repair by the railroad corporation, and the public way and its approaches shall be maintained and kept in repair by the city or town in which they are situated; if several railroads cross a public way at or near a given point, the commission shall apportion and award in what manner and proportion each of said railroad corporations shall maintain and keep in repair the framework of the bridge and its abutments if the public way crosses the railroad by an overhead bridge, and the bridge and its abutments if the public way passes under said railroads.

Maintenance of crossing and approaches.
1890, 428, § 6.
1891, 33, § 2.
R. L. 111, § 154.
210 Mass. 231.
213 Mass. 571.
Amended by 1912, 156.

Acts of 1912, Chapter 156.

An Act relative to the Maintenance and Repair in Certain Cases of Bridges over the Locations of Railroad Corporations.

SECTION 1. Section thirty-eight of Part I of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby amended by inserting after the word "framework", in the fourth line, the words:— and flooring,— and by striking out the words "and the surface of the bridge and its approaches", in the sixth line, and inserting in place thereof the words:— but the approaches of the bridge and, if said flooring has a wearing surface, consisting of an upper planking, paving or other surface material, such wearing surface of the bridge,— so as to read as follows:— Section 38. [For § 38 as amended, see above.]

1906, 463, § 38, part I, amended.

SECTION 39. The court shall appoint an auditor, who shall be a disinterested person, not an inhabitant of the city or town in which the crossing is situated, whose compensation shall be determined by the court and to whom shall from time to time be submitted all accounts of expense incurred by the railroad

Auditor, duties, compensation.
1890, 428, § 7.
1893, 283.
1894, 545.
1898, 538.
R. L. 111, § 155.

1902, 440, § 4.
 161 Mass. 32.
 162 Mass. 564.
 172 Mass. 117.
 197 Mass. 142.
 213 Mass. 571.
 Amended by
 1908, 390, § 2.

corporations, street railway companies, if any, city, town, commission or auditor, and who shall audit the same and make report thereon to the court. *The auditor shall upon request of any of the parties to the proceeding investigate the amounts presented for allowance by any city or town or any railroad corporation as expended in the payment of damages for land taken or affected by reason of the proposed alteration, which have been paid by the party primarily liable therefor, as provided in section thirty-seven, unless it appears that all of the parties to the proceeding for the abolition of the grade crossing have assented in writing to the payment or settlement so made by the party primarily liable, and in case the auditor determines that the amount so paid is in excess of what in his opinion should have been properly paid therefor, he shall allow only such portion of the amount so paid as he may deem to be just and reasonable.* Such auditing, when accepted by the court, shall be final. A certified copy of such report and the decree of the court thereon shall be filed with the auditor of the commonwealth. The court shall, from time to time, issue its decrees for payments on the part of the railroad corporation and on the part of any street railway company, not exceeding the amounts apportioned to them respectively by said auditor in his report, and for the payment by the commonwealth of a sum not exceeding the amounts apportioned to it and to the city or town; and such city or town shall repay to the commonwealth the amount apportioned to it, with interest thereon, payable annually at the rate of four per cent from the date of the acceptance of the report of the auditor. Such repayment of the principal shall be made annually in such amounts as the auditor of the commonwealth may designate; and the amount of payment designated for the year, with the interest due on the outstanding principal, shall be included by the treasurer and receiver general in the amount charged to such city or town, and shall be assessed upon it in the apportionment and assessment of its annual state tax. The treasurer and receiver general shall in each year notify such city or town of the amount of such assessment, which shall be paid by it into the treasury of the commonwealth as a part of, and at the time required for, the payment of its state tax. When the final assessment on a city or town has been paid by it, the treasurer and receiver general shall repay to it, in reduction of said final payment, the amount of interest, if any, which has been assessed to and paid by it in excess of the actual interest cost to the commonwealth for money borrowed for the abolition of grade crossings previous to the payment of said final assessment.

Acts of 1908, Chapter 390, §§ 2, 3.

1906, 463,
 part I, § 39,
 amended.

SECTION 2. Section thirty-nine of Part I of said chapter four hundred and sixty-three is hereby amended by inserting before the word "Such", in the ninth line, the words:— The auditor shall upon request of any of the parties to the proceeding investigate the amounts presented for allowance by any city or town or any railroad corporation as expended

in the payment of damages for land taken or affected by reason of the proposed alteration, which have been paid by the party primarily liable therefor, as provided in section thirty-seven, unless it appears that all of the parties to the proceeding for the abolition of the grade crossing have assented in writing to the payment or settlement so made by the party primarily liable, and in case the auditor determines that the amount so paid is in excess of what in his opinion should have been properly paid therefor, he shall allow only such portion of the amount so paid as he may deem to be just and reasonable, — so as to read as follows: — *Section 39. [For § 39 as amended, see above.]*

SECTION 40. The superior court shall have jurisdiction in equity to enforce compliance with the provisions of sections twenty-nine to forty-five, inclusive, and with the decrees, agreements and decisions made thereunder; and may issue and enforce such interlocutory decrees and orders as justice may require, and any order, appointment or decree under the provisions of said sections may be made in any county.

Enforcement
of law.
1890, 428, § 8.
1895, 103.
R. L. 111,
§ 156.
162 Mass. 561.

SECTION 41. If the board of aldermen of a city or the selectmen of a town in which a public way and a railroad cross each other and the directors of the railroad corporation are of opinion that it is necessary for the security and convenience of the public that alterations should be made in such crossing, in the approaches thereto, in the location of the railroad or public way or in the grades thereof, or in a bridge at such crossing, or that such crossing should be discontinued with or without building a new way in substitution therefor, and they agree as to the alterations which should be made, an instrument in writing signed, in behalf of a city, by the mayor, authorized by the board of aldermen, or, in behalf of a town, by the chairman of the selectmen, authorized by the selectmen, and by the president of the railroad corporation, authorized by its directors, specifying the manner and limits within which the alterations shall be made, and by which party the work shall be done, or how it shall be apportioned between the city or town and the railroad corporation, the general method of construction, the grades for the railroad and the public way or ways, and also what land or other property it is necessary to take, and what portion, if any, of an existing public way is to be discontinued, and how the cost thereof shall be apportioned between the city or town and the railroad corporation, shall be valid and binding on the city or town and the railroad corporation, respectively, and have the same force and effect as a decree of the court under the provisions of section thirty-six, if the board of railroad commissioners, after notice to all parties interested by advertisement and a public hearing, approve of the alterations set forth in the agreement as necessary for the convenience and security of the public. Said approval by said board shall constitute a taking of the land and other property specified in the agreement as necessary to be taken, and the clerk of said board shall, within thirty days after such approval, cause a copy of the agreement and approval to be filed with

Proceedings
upon agree-
ment as to
alterations.
1890, 428, § 9.
R. L. 111,
§ 157.
153 Mass. 161.
Amended 1910,
544.
213 Mass. 571.

the county commissioners of the county or counties in which the land or other property taken and the crossing are situated, to be recorded in the registry of deeds for the counties and districts in which such land, property and crossing are situated, and also to be filed with the auditor of the commonwealth. *Said copy of the agreement and approval shall be recorded in said registry of deeds without the payment of any fee therefor.* The provisions of section thirty-six relative to the taking of land under a decree of the court and of section thirty-seven relative to the recovery of damages sustained by any person in consequence of such taking, or of the alterations made in pursuance of said decree, shall apply to the taking of land and to damages sustained under an agreement made pursuant to the provisions of this section. The crossing and approaches shall be maintained and kept in repair as provided in section thirty-eight. If the agreement provides for the abolition of a public grade crossing, the board of railroad commissioners shall keep itself informed of the progress and character of the work and of the amounts reasonably expended for work done or for damages, so far as rendered necessary for the abolition of the grade crossing; and for that purpose it may employ any necessary agents, and, from time to time as it may consider proper, shall issue certified statements of the amount legally and properly expended for such abolition of a grade crossing; and the commonwealth shall pay to the parties entitled thereto under the agreement twenty per cent of such expenditure.

Acts of 1910, Chapter 544.

An Act relative to the Recording of Agreements and Approvals in Proceedings for the Abolition of Grade Crossings.

1906, 463, § 41,
part 1,
amended.

SECTION 1. Section forty-one of Part I of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby amended by inserting after the word "commonwealth", in the forty-second line, the words: — Said copy of the agreement and approval shall be recorded in said registry of deeds without the payment of any fee therefor, — so as to read as follows: — *Section 41. [For § 41 as amended, see above.]*

Payments by
the common-
wealth.
Bonds.
Sinking fund.
1890, 428, § 10.
1893, 424.
1896, 439,
§§ 1, 3.
R. L. 111,
§ 158.
1902, 440, § 5.
[1 Op. A. G.
305.]
213 Mass. 571.

SECTION 42. For the further abolition of grade crossings, in accordance with the provisions of sections twenty-nine to forty-five, inclusive, an expenditure of five million dollars by the commonwealth is hereby authorized. The amounts so to be paid by the commonwealth in any one year shall not exceed five hundred thousand dollars, but if in any one year the expenditure by the commonwealth shall not amount to five hundred thousand dollars, the unexpended remainder thereof shall be added to the five hundred thousand dollars allowed to be paid by it in any subsequent year. In computing the amount paid and to be paid by the commonwealth, the amounts apportioned to cities and towns and advanced by the commonwealth under the provisions of section thirty-nine shall not be included. To

meet the expenditure hereby authorized, the treasurer and receiver general, with the approval of the governor and council, shall issue scrip or certificates of indebtedness to an amount not exceeding five million dollars as an addition to the Abolition of Grade Crossings Loan, and shall add, in the manner provided in section one hundred and fifty-eight of chapter one hundred and eleven of the Revised Laws, to the existing sinking fund to provide for the payment of the same. Such scrip or certificates of indebtedness shall be issued as registered bonds, bearing interest at a rate not exceeding four per cent per annum, payable semi-annually on the first days of May and November. The amount necessary to meet the annual requirement of said sinking fund and to pay the interest on said bonds shall be raised by taxation from year to year.

Abolition of grade crossings loan.
[For R. L. 111, § 158, see below.]

Revised Laws, Chapter 111, § 158. [Unrepealed, see Part II, § 258.]

SECTION 158. The amount to be paid under the provisions of the preceding nine sections by the commonwealth in any one year, the year beginning with the twenty-first day of June, shall not exceed five hundred thousand dollars, and the total amount shall not exceed five million dollars; but if in any year the expenditure by the commonwealth shall not amount to five hundred thousand dollars, the unexpended balance thereof shall be added to the five hundred thousand dollars allowed to be paid by it in any subsequent year. In computing and estimating the amount paid and to be paid by the commonwealth, the amounts apportioned to cities and towns and advanced by the commonwealth under the provisions of section one hundred and fifty-five shall not be included. The treasurer and receiver general shall pay the amount of cost apportioned to the commonwealth from any money not otherwise appropriated, and shall from time to time, on request of the governor and council, issue and sell bonds, shall establish a sinking fund for the payment thereof into which shall be paid any premiums received on the sale of said bonds and shall apportion thereto from year to year, in addition, amounts sufficient with their accumulations to extinguish at maturity the debt incurred by the issue of said bonds. The amount necessary to meet the annual sinking fund requirements and to pay the interest on said bonds shall be raised by taxation from year to year. From the proceeds of the sale of such bonds, there shall be paid into the treasury of the commonwealth such amounts as may have been expended therefrom under the provisions of this section.

Payments by the commonwealth.
Bonds.
Sinking fund.
1890, 428, § 10.
1893, 424.
1896, 439,
§§ 1, 3.
[Op. A. G. 305.]

SECTION 43. A final decree shall not be entered by the superior court upon any report of commissioners setting forth a plan for the abolition, discontinuance or alteration of a grade crossing, adopting or confirming such plan or authorizing any expense to be charged against the commonwealth, until the board of railroad commissioners, after a hearing, shall have certified in writing that in their opinion the adoption of such plan and the expenditure to be incurred thereunder are consistent with the public interests, and are reasonably requisite to secure a fair distribution between the different cities, towns and railroads of the commonwealth, of the public money authorized to be expended under the provisions of the preceding

Board to decide which petitions shall be acted on.
1890, 428, § 11.
R. L. 111, § 159.
1902, 440, § 6.
213 Mass. 571.
Amended by 1909, 358.

[For R. L. 111,
§ 158, see
above.]

section, or section one hundred and fifty-eight of chapter one hundred and eleven of the Revised Laws, for the abolition of grade crossings, and that such expenditure will not, in the judgment of said board, exceed the amounts provided under the provisions of said sections to be paid by the commonwealth. *If the members of the board of railroad commissioners are special commissioners under the provisions of section twenty-nine the certificate herein provided for may be issued by said board without a hearing.*

Acts of 1909, Chapter 358.

An Act relative to the Certification by the Board of Railroad Commissioners of Expenditures for the Abolition of Grade Crossings.

1906, 463,
part I, § 43,
amended.

Section forty-three of Part I of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby amended by adding at the end thereof the following: — If the members of the board of railroad commissioners are special commissioners under the provisions of section twenty-nine the certificate herein provided for may be issued by said board without a hearing, — so as to read as follows: — *Section 43. [For § 43 as amended, see above.]*

Relative to
loans for the
abolition of
grade cross-
ings.
1902, 507, § 1.
213 Mass. 571.
[For R. L. 111,
§ 158, see
above.]

SECTION 44. The treasurer and receiver general is hereby authorized to transfer to the loan authorized by section one hundred and fifty-eight of chapter one hundred and eleven of the Revised Laws, from any unexpended balance of the loan authorized by chapters four hundred and thirty-three of the acts of the year eighteen hundred and ninety-two and two hundred and fifty-seven of the acts of the year eighteen hundred and ninety-six, which provide a sum of money for the abolition of certain grade crossings, such amount of money as may be from time to time to the credit of said loan, and which may not be needed for the purposes for which the loan was issued; and the balance so transferred shall be in addition to the five million dollars authorized to be expended under the provisions of said section, and shall be a part of the sum authorized to be expended under section forty-two, and available for the abolition of grade crossings under the provisions of said section, and of chapter one hundred and eleven of the Revised Laws.

Certain pro-
visions not to
apply.
1890, 428, § 12.
213 Mass. 571.
R. L. 111,
§ 160.

SECTION 45. The provisions of sections twenty-three to twenty-eight, inclusive, of Part I, and of sections one hundred and seventeen, one hundred and eighteen, one hundred and twenty-two, one hundred and twenty-three and one hundred and twenty-four of Part II., so far as they relate to proceedings for the abolition of grade crossings, shall not apply to cases within the provisions of the preceding sixteen sections.

Revised Laws, Chapter 27, § 7.

Temporary
loans for pay-
ment of grade
crossing
damages.
1892, 178.

SECTION 7. Cities and towns may by a majority vote incur debts for temporary loans for the payment of any land damages or any proportion of the general expense of altering a crossing which they are required primarily to pay under the provisions of sections one hundred and forty-nine to one hundred and sixty, inclusive, of chapter one hundred

and eleven. Such loans shall not be reckoned in determining the authorized limit of indebtedness, and when any money so paid is repaid, it shall be immediately applied to the discharge of the loan.

RAILROAD AND STREET RAILWAY RELIEF CORPORATIONS.

SECTION 46. Seven or more persons, a majority of whom are residents of this commonwealth, being employees of any railroad corporation or street railway company, organized under the laws of this commonwealth, may, in accordance with the provisions of sections three to six, inclusive, of chapter one hundred and twenty-five of the Revised Laws, form a corporation for the purpose of receiving, managing and applying such property and funds as it may receive by contribution, assessment or otherwise for the improvement and benefit of its members, and for their relief and the relief of their families in case of sickness, injury, inability to labor, or other cases of need.

Railroad, etc.,
relief corporations.
1882, 244, § 1.
1890, 181, § 1.
R. L. 125, § 17.
See 1909, 514,
§ 135.

Revised Laws, Chapter 125, §§ 3, 4, 6.

SECTION 3. The corporation shall be formed in the manner prescribed in, and subject to the provisions of, sections fifteen to twenty, inclusive, of chapter one hundred and ten [now 1903, 437, §§ 6-12], except as follows:

The capital stock, if any, shall not exceed five hundred thousand dollars.

The agreement of association of a corporation which has no capital stock may omit the statement of the amount of the capital stock and the par value and number of its shares. The par value of the shares of its capital stock, if any, may be ten, twenty-five, fifty or one hundred dollars. The fee to be paid to the secretary of the commonwealth upon the filing of the certificate of organization shall be five dollars.

SECTION 4. Before making and issuing a certificate of incorporation to a corporation formed for any of the purposes described in section two, the secretary of the commonwealth may forward a statement to the mayor and aldermen of the city, except Boston, or to the selectmen of the town, in which such society is to have its principal office or rooms, and, if such office or rooms are to be in Boston, to the board of police for the city of Boston, giving a list of the names of the persons who have applied for incorporation, the purpose of the organization as stated by the applicants, the location proposed to be occupied and all other facts which may be stated in the application for incorporation. The mayor and aldermen, selectmen or board of police for the city of Boston, upon the receipt of such statement, shall immediately make an investigation and ascertain whether any of the proposed incorporators have been engaged in the illegal selling of intoxicating liquor or in keeping places or tenements used for the purpose of illegal gaming, or whether they have been engaged in any other business or vocation prohibited by law, and shall forthwith report to the secretary of the commonwealth all the facts ascertained. If, in his opinion, it appears from said report or otherwise that the probable purpose of the formation of the proposed organization is to cover an illegal business, he shall refuse to issue a certificate of incorporation.

Organization.
1857, 56, § 2.
G. S. 32, § 2.
1874, 375,
§§ 3-5.
P. S. 115,
§§ 3, 4.
1888, 177.
1890, 191.

Investigation
of proposed
associates.
1890, 439, § 1.
1893, 226, § 1.
See 1906, 291,
§ 10.
1907, 377.

SECTION 6. The corporation may prescribe by its by-laws the manner in which, and the officers and agents by whom, the purposes of its incor-

By-laws.
Officers.
1874, 375, § 6.

1875, 49, § 1.
P. S. 115,
§§ 5, 6.
192 Mass. 150.

poration may be accomplished, and, instead of the directors and other officers to be chosen at the first meeting, it may have a board of other officers with the powers of directors, and presiding, financial and recording officers with the powers of president, treasurer and clerk; and its certificate of organization may be made, signed and sworn to by its presiding, financial and recording officers and a majority of its other officers having the powers of directors; and the certificate issued by the secretary under the provisions of section twenty of chapter one hundred and ten shall be modified to correspond with the facts in each case.

By-laws,
approval of.
1882, 244,
§§ 2, 3.
R. L. 125, § 18.
See 1909, 514,
§ 135; 1909,
502, § 1.

SECTION 47. The by-laws of such corporation shall be approved by the board of railroad commissioners, and shall prescribe the manner in which, and the officers and agents by whom, the purpose of its incorporation may be carried out, and also the manner in which its property may be invested. Such corporation shall annually, and as often as may be required by the board of railroad commissioners, render to said board such statements of its membership and financial transactions and such other information relative thereto as said board may consider necessary for a proper exhibit of its business and standing. Said board may verify such statement by an examination of the books and papers of the corporation; and whoever, having charge or custody of such books and papers, neglects to comply with the provisions of this section shall be punished by a fine of not more than five hundred dollars.

Railroad, etc.,
company may
associate with
employees.
1886, 125.
1890, 181, § 2.
R. L. 125, § 19.
See 1909, 514,
§ 135.

SECTION 48. A railroad corporation which operates a railroad or portion thereof in this commonwealth, or a street railway company, may, by vote of its directors, associate itself with seven or more of its employees in forming a corporation under the provisions of section forty-six, or may, upon the invitation of any such society, become a member thereof, and may aid such corporation by contributions to its funds or otherwise. The by-laws of such corporation shall provide for the manner in which the railroad corporation or street railway company shall vote and be represented in said corporation. The funds of such corporation shall not be liable to attachment by the trustee process, or be liable to be taken on execution or on any other process, legal or equitable, to satisfy any debt or liability of the railroad corporation or street railway company or of any member of the corporation.

RAILROAD AND STREET RAILWAY POLICE.

— police.
1871, 331,
§§ 1, 8.
1874, 372,
§ 143.
1880, 85, § 1.
P. S. 103, § 13.
1895, 313,
§§ 1, 4.
R. L. 108,
§§ 13, 21.

SECTION 49. The mayor of a city, or the selectmen of a town, upon the petition of a railroad corporation having a passenger station in such city or town, or of a street railway company operating a street railway therein, may appoint as many of the persons designated in said petition as police officers as they may deem proper for the purposes and with the powers hereinafter set forth.

Copy of
appointment
to be filed.

SECTION 50. An attested copy of the record of all such appointments shall be filed by the petitioner with the clerk of

every city or town, other than the city or town of appointment, in which the railroad corporation or street railway company operates its cars, and in which it is intended that such police officers shall act; and the filing of such attested copy shall constitute the persons named therein railroad or street railway police, respectively, within such city or town, and shall be conclusive evidence of the regularity of their appointment.

SECTION 51. Such police officers shall be sworn before a justice of the peace, and shall hold their offices until their appointment is revoked by the mayor of the city or the selectmen of the town in which they are appointed; but such petitioner, upon ceasing to require the services of any of such officers, shall file a notice to that effect with the clerk of the city or town in which he is appointed, and with the clerks of the several cities and towns in which notice of such appointment has been filed, and thereupon the power of such officer shall cease.

SECTION 52. Such officers shall, when on duty except as detectives, wear in plain sight a metallic badge, inscribed with the words, "Railroad Police", or "Street Railway Police", as the case may be, and the name or initials of the corporation or company for which they are appointed; and the presence of any such officer on the cars or premises of the corporation or company upon whose petition he was appointed, wearing such badge, shall be prima facie evidence that he is lawfully upon duty.

SECTION 53. Railroad and street railway police officers may preserve order on the premises and cars of the corporation or company upon whose petition they are appointed; may, without a warrant, arrest an idle, noisy, intoxicated or disorderly person upon such premises or cars; or a passenger upon such cars who refuses to pay his fare, and remove him to the baggage or other suitable car; may, without a warrant, arrest any person committing any of the offences specified in section sixty-six; and street railway police officers may, without a warrant, arrest any person committing any of the offences specified in section eighty-four of Part III.

SECTION 54. The person so arrested shall be taken to the police station or other place of lawful detention in the city or town in which the arrest is made, or in the city or town in which the car next stops; he may be placed in charge of a police officer or constable in either of such cities or towns, to be taken to a lawful place of detention within twenty-four hours after the time of such arrest, Sundays excepted. Complaint shall be made against the person arrested by the officer taking him to the place of detention for the offence for which he was arrested to a police, district or municipal court, or trial justice having jurisdiction of such offences committed in the city or town in which such person is detained, and such court or justice shall have jurisdiction of the case.

SECTION 55. Railroad and street railway police officers shall be paid by the corporation or company upon whose petition

1871, 331, § 2.
1874, 372,
§ 143.
1878, 90.
1880, 85, § 2.
P. S. 103, § 14.
1896, 225, § 1.
R. L. 108, § 14.

Term of office.
1871, 331,
§§ 1, 9.
1874, 372,
§ 143.
1880, 85, § 2.
P. S. 103, § 15.
1883, 65.
R. L. 108, § 15.

Badges.
1871, 331, § 3.
1874, 372,
§ 144.
1880, 85, § 3.
P. S. 103, § 16.
1896, 225, § 2.
R. L. 108, § 16.

Powers of police.
1871, 331,
§§ 4, 5, 7,
1874, 372,
§§ 145, 146.
P. S. 103,
§§ 17, 18.
1895, 318, § 3.
R. L. 108,
§§ 17, 18, 23.
143 Mass. 68,
228.
148 Mass. 119.

Arrest.
Duties of police.
1895, 318, § 3.
R. L. 108, § 23.

Compensation.
1874, 372,
§ 147.

P. S. 103, § 20. they are appointed. Such corporation or company shall be
 R. L. 108, § 20. liable for any official misconduct of such officers to the same
 extent as for torts of agents or servants in their employ.

Revised Laws, Chapter 204, § 46.

Fees of rail-
 road police.
 1890, 440, § 9.

SECTION 46. Railroad police shall not be entitled to any fees for attendance upon a trial as witnesses for the commonwealth, but they may be allowed their necessary expenses therefor.

INSPECTION OF EQUIPMENT.

Duties of
 inspectors.
 1894, 535,
 §§ 3, 4.
 1897, 376, § 1.
 R. L. 111,
 § 223.

SECTION 56. Railroad and street railway inspectors who are appointed under the provisions of section one, shall, under the direction of the board of railroad commissioners, examine the roadbed, tracks, crossings, stations, rolling stock, machinery, equipments, appliances and grounds used in or in connection with the operation of railroads or street railways; and if they are considered by an inspector not to be in compliance with the requirements of law, or to be in such condition as to endanger the safety of the public or of employees, he shall so report in writing to said board, which, if it considers it necessary, shall give notice to the corporation or company, or to the persons who own or operate the railroad or street railway, of such failure to comply with the requirements of the law or of such defects, with such recommendation as it may consider necessary or proper.

Investigation
 of accidents.
 1894, 535, § 5.
 1897, 376, § 2.
 R. L. 111,
 § 224.

SECTION 57. An inspector shall, under the direction of the board of railroad commissioners, investigate as promptly as may be any accident upon a railroad or street railway, or resulting from the operation thereof, which causes the death or imperils the life of a passenger, employee or other person, and shall report thereon to said board. He shall attend the inquest held in the case of any such death by accident, and may cause any person who has knowledge of the facts or circumstances connected with such death to be summoned as a witness to testify at the inquest.

Acts of 1913, Chapter 784, § 13.

Inspection of
 property, etc.

SECTION 13. The commission may, either through its members or responsible agents, engineers, inspectors or examiners duly authorized by it, enter upon any premises occupied by any common carrier for any purpose consistent with the provisions of this act. It may inspect the property, equipment, buildings, plants, factories, power-houses, ducts, conduits and offices of any common carrier. It shall have the right in connection with such inspection by its members, inspectors or experts to have such service, of the sort proffered by the common carrier, performed for it as it may reasonably require, including the right to ride upon any locomotive, car or steamship while in service, and to have, upon reasonable notice, the use of an inspection locomotive or car whenever that is necessary in the opinion of the commission, for a physical inspection of all or any of the lines and stations of any railroad or railway under its supervision.

RAILROAD AND STREET RAILWAY BRIDGES.

SECTION 58. Every railroad corporation and street railway company shall, upon request of the board of railroad commissioners, and at least once in two years, cause an examination of its bridges and of the approaches thereto to be made by a competent engineer, who shall report the result of his examination, his conclusions and recommendations to the corporation or company, and it shall forthwith transmit a copy of the report to said board. Before a street railway company builds a bridge, it shall first submit the plans thereof to said board for approval. Upon the completion of a new bridge, the railroad corporation or street railway company shall forthwith cause such examination and report to be made and transmitted to said board. The report shall furnish such information, in such detail and with such drawings or prints, as may be requested in writing by said board. Said board may make further examination of the bridge structure if necessary or expedient. The provisions of this section shall not exempt a corporation from making other and more frequent examinations of its bridges and the approaches thereto.*

Examination of railroad and street railway bridges.
1887, 334,
§§ 1-3.
1899, 286.
R. L. 111,
§ 169.
See 1908, 552.

CONDITIONAL SALE OF ROLLING STOCK.

SECTION 59. A contract for the sale of railroad or street railway rolling stock may stipulate that the title to the property sold or contracted to be sold shall not vest in the purchaser until the purchase price is fully paid, or that the vendor shall have and retain a lien thereon for the unpaid purchase money although possession thereof may be delivered immediately or at any subsequent time, and a contract for the leasing or hiring of such property may stipulate for a conditional sale thereof at the

Conditional sale of rolling stock.
1894, 326,
§§ 1, 4.
R. L. 111, § 75.
See 1910, 187.

* Bridges constructed and used exclusively for street railway purposes should have floor systems similar to those used on steam railroad bridges. While there is some difference in practice with reference to the details of such floors the Board (under § 53 of Part I of chapter 463 of the Acts of 1906) recommends the following construction:—

(a) Ties shall be of hard pine, not less than 5 inches by 7 inches, and not less than 10 feet long for a single track, and shall be spaced not over 8 inches apart in the clear. (The Board recommends a spacing of 6 inches in the clear.) Ties resting on wooden stringers need not be notched, and at least every third tie shall be securely spiked or bolted to the stringers. Ties resting on steel stringers or girders shall be notched one-half inch over supports, and at least every fourth tie shall be fastened to the stringers or girders at each end by a three-quarter-inch hook bolt. Ties resting on plate girders or trusses with cover plates shall be grooved for the rivets, and notched to correspond to the thickness of the plates.

(b) Near the ends of the ties there shall extend on each side a wooden guard timber not less than 6 inches by 6 inches, notched one inch over the ties and bolted to every third tie by a three-quarter-inch bolt. (The office of this guard timber is not to prevent a derailed wheel from running off the bridge, but simply to keep the ties in place.) With ties 10 feet long this guard timber will be from 21 inches to 24 inches in the clear outside of the track rails. Guard timbers must extend over all piers and abutments, and, if spliced, shall be spliced over a tie with a halved joint 6 inches long, bolted to the tie.

(c) In order to prevent a derailed truck from running far from the track, even if it should be derailed before reaching the bridge, inside guard rails shall be provided. These rails shall be of the same height as the track rails, and shall extend across the entire bridge and for a distance of about 50 feet beyond the ends, coming to a point in the centre of the track, the point being protected by a casting or frog point. If there is a sharp curve on the approach, the guard rails shall be extended around the curve. These rails shall have the heads not less than 8 inches in the clear inside of the heads of the track rails, and shall be securely spiked to every tie.

(d) If the bridge is on a curve, the outer rail must be suitably elevated.

7. In the case of combined highway and electric railway bridges, the railway track shall in general have ties resting upon the stringers, the ties to be not less than 6 inches by 6 inches, and 8 feet long, spaced 10 inches apart, and planked over with plank not less than 2 inches thick. The planking and wheel guards on the highway portion of the structure must be satisfactory to the Board.

termination of such contract, and that the rentals or amounts to be received thereunder, may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee. No such contract shall be valid as against any subsequent attaching creditor or any subsequent bona fide purchaser for value and without notice unless it is in writing executed by the parties and acknowledged by the vendee, lessee or bailee before a magistrate authorized to take acknowledgments of deeds, and in the same manner as deeds are acknowledged, and recorded in the office of the secretary of the commonwealth; nor unless each locomotive, engine or car so sold, leased or hired, or contracted to be sold, leased or hired as aforesaid, shall have the name of the vendor, lessor or bailor plainly marked on each side thereof, followed by the word "owner", "lessor", or "bailor", as the case may be. The provisions of chapter one hundred and ninety-eight of the Revised Laws shall not apply to such contract.

Record of contract, and fees.
1894, 326, § 2.
R. L. 111, § 76.
See 1910, 187.

SECTION 60. A contract authorized by the preceding section shall be recorded by the secretary of the commonwealth in a book to be kept for that purpose, and upon payment in full of the purchase money and the performance of the terms and conditions stipulated in such contract, a declaration in writing thereof may be made by the vendor, lessor or bailor, or his assignee on the margin of the record of the contract, attested, or it may be made by a separate instrument, acknowledged by the vendor, lessor or bailor, or his assignee, and recorded as aforesaid. A fee of five dollars shall be paid to the secretary of the commonwealth for recording such contract or declaration, and a fee of one dollar for noting such declaration on the margin of the record.

ATTACHMENT OF ROLLING STOCK.

Attachment of rolling stock.
1875, 144.
1881, 124.
P. S. 161, § 39.
R. L. 167, § 39.
140 Mass. 131.
187 Mass. 596.

SECTION 61. Railroad cars and engines, and street railway cars, in use and making regular passages on railroads or railways, shall not be attached upon mesne process, unless the officer who makes an attachment of such property has first demanded of the owners or managers thereof other property upon which to make such attachment equal in value to the *ad damnum* in the writ, and such owners or managers have refused or neglected to comply with said demand. Such attachment shall be void, unless the officer certifies in his return that he has made such demand, and that the owners or managers have refused or neglected to comply therewith.

NOTICE OF ACCIDENTS.

Notice of accidents.
1849, 172, § 2.
G. S. 63, § 100.
1869, 408, § 14.

SECTION 62. Every railroad corporation and street railway company shall give immediate notice of an accident on its road or railway, which results in a loss of life, to the medical

examiner of the county who resides nearest to the place of accident, and shall also, within twenty-four hours, give notice to the board of railroad commissioners of any such accident or of any accident of the description of accidents of which said board may require notice to be given. For each omission to give such notice, the corporation or company shall forfeit not more than one hundred dollars.*

1873, 98, § 2.
1874, 372,
§ 159.
1878, 7,
P. S. 112,
§ 208.
R. L. 111,
§ 263.
1903, 297.

Revised Laws, Chapter 24, § 11.

[SECTION 11. . . . An inquest shall be held in all cases of death by accident upon a railroad, and the court or justice holding such inquest or an inquest in case of death by accident upon a street railway shall give reasonable notice of the time and place thereof to the board of railroad commissioners. The attorney general or the district attorney may direct an inquest to be held in the case of death by any casualty.]

When inquest shall be held.
1877, 200, § 10.
P. S. 26, § 13.
1894, 535, § 5.
1897, 376, § 2.
Repealed.
1912, 443.

Section 11. The court or trial justice shall thereupon hold an inquest, from which all persons not required by law to be present may be excluded, and the witnesses may be kept separate, so that they cannot converse with each other until they have been examined. The district attorney or any person designated by him, may attend the inquest and examine the witnesses. Within sixty days after any case of death by accident upon a railroad, electric railroad, street railway or railroad for private use an inquest shall be held in such case, and the court or justice holding such inquest shall give reasonable notice of the time and place thereof to the board of railroad commissioners. The attorney-general or the district attorney may direct an inquest to be held in the case of death by any casualty.

Acts of 1912, Chapter 443.

An Act relative to Inquests in Cases of Death by Accidents on Railroads and Railways.

Section eleven of chapter twenty-four of the Revised Laws, as amended by section one of chapter one hundred and nineteen of the acts of the year nineteen hundred and four and by section two of chapter two hundred and seventy-three of the acts of the year nineteen hundred and nine, is hereby further amended by striking out the said section and inserting in place thereof the following: — *Section 11. [For § 11 as amended, see above.]*

R. L. 24,
1904, 119, § 1;
1909, 273, § 2,
amended.

Revised Laws, Chapter 24, § 14.

[SECTION 14. If a magistrate has reason to believe that an inquest to be held by him relates to the death by accident of a passenger or employee upon a railroad or of a traveller upon a public or private way at a railroad crossing, or to a death by accident connected with the operation of a street railway, he shall cause a verbatim report of the evidence to be made and sworn to by the person making it, and the report and the bill

Report of evidence at certain inquests.
1888, 365.
1889, 154.
1890, 440, § 9.
1896, 302.
Amended.
1912, 496.

* Under the authority of section 62, Part I, chapter 463, Acts of 1906, the Board requires that reports be made: —

1. Of all accidents resulting in serious personal injury, as well as in loss of life, whether of passengers, employees or others.
2. Of all accidents which do not result in personal injury, but which cause serious detention of passenger trains or electric cars.

When an accident occurs at a station it should be so reported and the name of the station given; when it occurs elsewhere the place should be described with reasonable accuracy.

The word "station" will be deemed to mean that part of the railroad premises within which trains are customarily stopped for the purpose of receiving or discharging passengers.

The word "road" will be deemed to mean all parts of premises the use of which is ordinarily necessary to the operation of the railroad or railway.

The accidents to be reported are those which are incident to the movement of any engine or car.

Each report should include a brief statement of the character of the accident and the nature of the injury.

for services, after examination and approval in writing by such magistrate, shall be forwarded forthwith to the board of railroad commissioners. Such bill when approved by said board shall be forwarded to the auditor of accounts and be paid by the commonwealth, assessed on the several corporations owning or operating the railroad or street railway on which the accident occurred and shall be collected in the manner provided in section ten of chapter one hundred and eleven. The magistrate may, in his discretion, refuse fees to witnesses in the employ of the company upon whose railroad the accident occurred.]

Section 14. If a magistrate has reason to believe that an inquest to be held by him relates to the death by accident of a passenger or employee upon a railroad or electric railroad or a traveler upon a public or private way at a railroad crossing, or to a death by accident connected with the operation of a street railway or of a railroad for private use, he shall cause a verbatim report of the evidence to be made and sworn to by the person making it, and the report and the bill for services, after examination and approval in writing by the magistrate, shall be forwarded to the board of railroad commissioners within thirty days after the date of the inquest. The bill when approved by said board shall be forwarded to the auditor and be paid by the commonwealth, assessed on the several railroad, electric railroad or street railway corporations or other corporations, persons, firms or associations owning or operating the railroad, electric railroad or street railway or railroad for private use on which the accident occurred, and shall be collected in the manner provided in section three of Part I of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six. The magistrate may, in his discretion, refuse fees to witnesses in the employ of the company upon whose railroad or railway the accident occurred.

Acts of 1912, Chapter 496.

An Act relative to Reports of Evidence at Inquests in Cases of Death by Accidents on Railroads and Railways.

R. L. 24
amended.

Chapter twenty-four of the Revised Laws is hereby amended by striking out section fourteen and inserting in place thereof the following:—
Section 14. [For § 14 as amended, see above.]

PENALTY FOR LOSS OF LIFE.

Penalty on corporations for loss of life through negligence, etc.
1840, 80.
1853, 414,
§§ 1-3.
G. S. 63,
§§ 97-99.
1864, 229,
§§ 37, 38.
1867, 164,
1871, 381,
§§ 49, 50.
1874, 372,
§ 163.
1881, 199,
§§ 1, 5, 6.
P. S. 112,
§ 212.
1883, 243.
1886, 140.
197 Mass. 578.
200 Mass. 15,
17, 18, 143,
444.
201 Mass. 38.
203 Mass. 454.

SECTION 63. If a corporation which operates a railroad or a street railway, by reason of its negligence or by reason of the unfitness or [gross] negligence of its agents or servants while engaged in its business, causes the death of a passenger, or of a person who is in the exercise of due care and who is not a passenger or in the employ of such corporation, it shall be punished by a fine of not less than five hundred nor more than [five thousand] *ten thousand* dollars which shall be recovered by an indictment prosecuted within one year after the time of the injury which caused the death, and shall be paid to the executor or administrator, one half thereof to the use of the widow and one half to the use of the children of the deceased; or, if there are no children, the whole to the use of the widow; or, if there is no widow, the whole to the use of the next of kin; but a corporation which operates a railroad shall not be so liable for the death of a person while walking or being upon its

railroad contrary to law or to the reasonable rules and regulations of the corporation. Such corporation shall also be liable in damages in the sum of not less than five hundred nor more than [five thousand] *ten thousand* dollars, which shall be assessed with reference to the degree of culpability of the corporation or of its servants or agents, and shall be recovered in an action of tort, begun within one year after the injury which caused the death, by the executor or administrator of the deceased for the use of the persons hereinbefore specified in the case of an indictment. If an employee of a railroad corporation, being in the exercise of due care, is killed under such circumstances as would have entitled him to maintain an action for damages against such corporation if death had not resulted, the corporation shall be liable [in the same manner and to the same extent] *in the sum of not less than five hundred nor more than [five thousand] ten thousand dollars, in the same manner* as it would have been if the deceased had not been an employee. But no executor or administrator shall, for the same cause, avail himself of more than one of the remedies given by the provisions of this section.

204 Mass. 250.
205 Mass. 16,
417, 487.
206 Mass. 269,
557.
209 Mass. 87,
101.
210 Mass. 243,
305, 554, 559.
211 Mass. 487,
519.
212 Mass. 398.
213 Mass. 13.
R. L. 111,
§ 267.
Amended
1907, 392, § 1.
1911, 635.
1912, 354.
11 Cush. 512.
5 Gray, 473.
10 Allen, 189.
13 Allen, 589.
101 Mass. 201.
107 Mass. 236.
108 Mass. 7.
120 Mass. 372.
126 Mass. 61.
129 Mass. 500.
134 Mass. 211.
135 Mass. 448.
136 Mass. 6.
139 Mass. 238,
252, 542.
141 Mass. 471.
143 Mass. 501.

144 Mass. 425.	159 Mass. 3, 536.	165 Mass. 581.	180 Mass. 490.
147 Mass. 101.	160 Mass. 39.	166 Mass. 492.	182 Mass. 337.
148 Mass. 478, 482.	161 Mass. 26, 298.	171 Mass. 33, 52, 164.	185 Mass. 510.
153 Mass. 79, 113, 300.	162 Mass. 66.	172 Mass. 211.	187 Mass. 77.
154 Mass. 478, 524.	163 Mass. 132, 343.	173 Mass. 136.	188 Mass. 8, 371.
156 Mass. 316, 320.	164 Mass. 425.	175 Mass. 181.	190 Mass. 84.

Acts of 1907, Chapter 392.

An Act to increase the Penalty imposed on a Railroad or Street Railway Corporation for Loss of Life through its Negligence.

SECTION 1. Section sixty-three, Part I. of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby amended by striking out the word "gross", in the third line, by striking out the words "five thousand", in the eighth and twenty-first lines, and inserting in place thereof in each case the words:— ten thousand,— and by striking out the words "in the same manner and to the same extent", in the thirty-first and thirty-second lines, and inserting in place thereof the words:— in the sum of not less than five hundred nor more than five thousand dollars, in the same manner,— so as to read as follows:— *Section 63. [For § 63 as amended, see above.]*

1906, 463, § 63
amended.
Amended
1911, 635;
1912, 354.

Acts of 1911, Chapter 635.

An Act relative to the Recovery of Damages for Conscious Suffering in Certain Cases of Death from Injury.

SECTION 1. In any civil action brought under the provisions of section sixty-three of Part I of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six, as amended by section one of chapter three hundred and ninety-two of the acts of the year nineteen hundred and seven, damages may be recovered under a separate count at common law for conscious suffering resulting from the same injury, but any sum so recovered shall be held and disposed of by the executors or administrators as assets of the estate of the deceased.

Recovery of
damages in
certain cases
of death from
injury.

SECTION 2. This act shall take effect upon its passage. [Approved July 7, 1911.]

Acts of 1912, Chapter 354.

An Act to increase the Penalty imposed on a Railroad Corporation for Loss of Life through its Negligence.*1906, 463, amended.*

Section sixty-three of Part I of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six, as amended by chapter three hundred and ninety-two of the acts of the year nineteen hundred and seven, is hereby further amended by striking out the words "five thousand", in the thirty-third line, and inserting in place thereof the words: — ten thousand, — so that the last two sentences of the said section will read as follows: — If an employee of a railroad corporation, being in the exercise of due care, is killed under such circumstances as would have entitled him to maintain an action for damages against such corporation if death had not resulted, the corporation shall be liable in the sum of not less than five hundred nor more than ten thousand dollars, in the same manner as it would have been if the deceased had not been an employee. But no executor or administrator shall, for the same cause, avail himself of more than one of the remedies given by the provisions of this section. [*Approved April 1, 1912.*]

EVASION OF PAYMENT OF FARE.

Evasion of payment of fare.

1849, 191, § 2.
 1857, 240, § 5.
 G. S. 63,
 §§ 113, 141.
 1864, 229, § 33.
 1871, 381, § 37.
 1874, 372,
 § 150.
 P. S. 112,
 § 197.
 R. L. 111,
 § 251.
 143 Mass. 68.
 174 Mass. 401.
 178 Mass. 64.
 179 Mass. 242.
 185 Mass. 279.

SECTION 64. Whoever fraudulently evades or attempts to evade the payment of a toll or fare lawfully established by a railroad corporation or street railway company, either by giving a false answer to the collector of the toll or fare, or by travelling beyond the point to which he has paid the same, or by leaving the train or car without having paid the toll or fare established for the distance travelled, or otherwise, shall forfeit not less than five nor more than twenty dollars. Whoever does not upon demand first pay such toll or fare shall not be entitled to be transported for any distance, and may be ejected from a street railway car; but no person shall be removed from a car of a railroad corporation except as provided in section fifty-three, nor from a train except at a regular passenger station.

Revised Laws, Chapter 212, § 35.

Disorderly conduct in public conveyances.

1883, 102.

SECTION 35. Whoever, in or upon a railroad carriage, steamboat or other public conveyance, is disorderly, or disturbs or annoys travellers in or upon the same by profane, obscene or indecent language, or by indecent behavior, shall be punished by imprisonment for not more than thirty days or by a fine of not more than fifty dollars.

INJURY TO SIGNALS.

Injury to signal.

1876, 63,
 P. S. 112,
 § 207.
 1884, 5.
 1899, 252.
 R. L. 111,
 § 262.

SECTION 65. Whoever unlawfully and intentionally injures, molests or destroys any signal of a railroad corporation or street railway company, or any line, wire, post or other structure or mechanism used in connection with such signal, or prevents or in any way interferes with the proper working of such signal, shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than two years, or by both such fine and imprisonment.

THROWING MISSILES, ETC.

SECTION 66. Whoever wilfully throws or shoots a missile at a locomotive engine, or railroad or street railway car or train, or at a person on such engine or car or train, or in any way assaults or interferes with a conductor, engineer, brakeman, or motorman, while in the performance of his duty on or near such engine, or car or train, shall be punished by a fine of not more than one hundred dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment. A person so offending may be arrested without a warrant by an officer authorized to serve criminal process, and kept in custody in jail or other convenient place not more than twenty-four hours, Sundays and legal holidays excepted, at or before the expiration of which time he shall be taken before a proper court or magistrate, and proceeded against according to law.

Throwing missiles, assaulting engineer, etc. 1880, 110. P. S. 112, § 206. R. L. 111, § 260. 145 Mass. 403.

LEASE OR PURCHASE OF FRANCHISE.

SECTION 67. A lease or purchase and sale of the franchise and property of a railroad corporation, or street railway company, and a consolidation of two or more railroad corporations, or street railway companies, or a contract that either corporation shall perform all the transportation upon and over the road of the other, whether authorized by general laws or a special act, shall not be valid or binding until the terms thereof shall, after public notice and a hearing, have been approved by the board of railroad commissioners, and a certificate signed by said board, setting forth the vote of approval, shall have been filed in the office of the secretary of the commonwealth. Said board shall announce its decision within thirty days after the final hearing upon the application of any railroad corporation or street railway company for permission to lease or sell to, consolidate with or purchase the franchise and other property of, any other railroad corporation or street railway company, or to contract with any other railroad corporation or street railway company that either corporation shall perform all the transportation upon and over the road of the other.

Leases, etc., to be approved by board. 1894, 506, § 1. R. L. 111, § 278. Amended. 1907, 585, § 7. See 1910, 443.

Acts of 1907, Chapter 585.

An Act to restrain the Consolidation of Railroad Corporations.

SECTION 1. No corporation owning, leasing or operating a railroad wholly or partly in this Commonwealth, nor any person or corporation acting in its interest shall, directly or indirectly, after the passage of this act acquire, or attempt to acquire by purchase, exchange of shares, or in any other way, any shares of the capital stock of any domestic railroad company not lawfully leased, owned or operated by it prior to the first day of May in the year nineteen hundred and seven, except under specific authority provided by statute. No such corporation nor any person in its behalf shall, prior to the first day of July, nineteen hundred and eight, vote any such stock which it now holds or may acquire in its own name

"Merger bill," so-called. Acquisition of stock of domestic railroads, etc. Voting upon, etc.

or in that of any person or corporation acting in its interest, nor attempt to vote the same, at any meeting of the stockholders of such domestic railroad company, nor exercise, nor attempt to exercise, directly or indirectly, any control, direction, supervision or influence whatsoever over the acts or doings of such domestic railroad company by virtue of such holding of stock therein.

Voting at elections on shares of stock, until.

SECTION 2. No domestic railroad company shall prior to said date permit any shares of its capital stock owned or controlled by a corporation, as designated in section one, or by any person or corporation acting in its interest, to be voted on behalf of said corporation by its officers, attorneys or agents, or any other person, at any corporate election for directors or officers of such domestic railroad company. No such domestic railroad company, or any officer, director, servant or agent thereof, shall permit or suffer the said corporation designated in section one or any of its officers or agents to exercise any control whatsoever over the corporate acts of such domestic company. No officer, agent, servant or employee of such corporation shall prior to the first day of July, nineteen hundred and eight, be elected or appointed or serve or act as an officer, agent, servant or employee of such domestic railroad company: *provided, however*, that the provisions of this section shall not apply to any vote upon such shares of stock nor to any action taken under the provisions of section three of this act; nor shall the provisions of this section apply to the election, appointment, service and acts of any officer, agent, servant or employee of any domestic railroad company that may have been lawfully owned, leased or operated prior to the first day of May, nineteen hundred and seven, by such railroad corporation as is designated in section one. If at any annual meeting or at any other meeting held for the purpose of electing officers less than a majority of the stock of such domestic railroad company is represented, no election of officers shall take place.

Proviso.

Application to board of railroad commissioners.

Determination, report.

SECTION 3. The presidents, or a majority of the boards of directors, or the holders of not less than one third in interest of the capital stock of two or more railroad corporations, may apply to the board of railroad commissioners for its determination as to whether the consolidation of the railroads of such corporations is consistent with the public interest. If the board, after public notice and a hearing, shall find that such consolidation is consistent with the public interest, it shall report its findings to the general court, together with drafts of a law or laws to authorize such consolidation upon the agreement of the corporations to be consolidated, and after ratification by a vote of not less than two thirds in interest of the stockholders in each, and under terms and conditions which will effectually prevent any decrease in the facilities for transportation on the railroad of either of such corporations or any increase in the rates for passengers or freight by the said consolidation, and which will, in the opinion of the board, secure to the Commonwealth adequate control over the organization, conduct, and management of the said corporations and railroads, and upon such other terms and conditions as may seem to the board desirable and proper.

No increase of fares or rates.

SECTION 4. In case of any lease, purchase and sale or consolidation as authorized by the foregoing section, no rate, fare or charge for transportation of passengers or property shall be increased, and no facilities for transportation shall be diminished thereby, nor in connection therewith or as a result thereof shall there be any increase in the aggregate outstanding capital stock or indebtedness of the contracting companies.

Switch connections.

SECTION 5. A railroad corporation, upon the application of any shipper tendering freight for transportation, shall construct, maintain and operate upon reasonable terms a switch connection or switch con-

nections with a lateral line of railroad or private side track owned, operated or controlled by such shipper and shall, upon the application of any shipper, provide upon its own property a side track and switch connection with its line of railroad, whenever such side track and switch connection are reasonably practicable, can be put in with safety, and the business therefor is sufficient to justify the same.

SECTION 6. If any railroad corporation shall fail to install or operate any such switch connection with a lateral line of railroad or any such side track and switch connection as aforesaid, after written application therefor has been made to it, any person interested may present the facts to the board of railroad commissioners by written petition, and the board shall investigate the matters stated in such petition, and give such hearing thereon as it may deem necessary or proper. If the board be of opinion that it is safe and practicable to have a connection, substantially as prayed for, established or maintained, and that the business to be done thereon justifies the construction and maintenance thereof, it shall make an order directing the construction and establishment thereof, specifying the reasonable compensation to be paid for the construction, establishment and maintenance thereof, and may in like manner upon the application of the railroad corporation order the discontinuance of such switch connection.

Switch connections, failure to install, etc. Appeal to railroad commissioners.

SECTION 7. Section sixty-seven of Part I of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby amended, by inserting after the word "companies", in the fourth line, the words: — or a contract that either corporation shall perform all the transportation upon and over the road of the other, — and by adding at the end thereof the words: — or to contract with any other railroad corporation or street railway company that either corporation shall perform all the transportation upon and over the road of the other, — so as to read as follows: — *Section 67.* A lease or purchase and sale of the franchise and property of a railroad corporation, or street railway company, and a consolidation of two or more railroad corporations, or street railway companies, or a contract that either corporation shall perform all the transportation upon and over the road of the other, whether authorized by general laws or a special act, shall not be valid or binding until the terms thereof shall, after public notice and a hearing, have been approved by the board of railroad commissioners, and a certificate signed by said board, setting forth the vote of approval, shall have been filed in the office of the secretary of the commonwealth. Said board shall announce its decision within thirty days after the final hearing upon the application of any railroad corporation or street railway company for permission to lease or sell to, consolidate with or purchase the franchise and other property of, any other railroad corporation or street railway company, or to contract with any other railroad corporation or street railway company that either corporation shall perform all the transportation upon and over the road of the other.

1906, 463, Part I, § 67 amended. Railroad commissioners to approve contracts.

SECTION 8. Section two hundred and nine of Part II of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby amended by striking out after the word "section", in the thirteenth line, the words "two hundred and seven", and inserting in place thereof the words: — sixty-seven of Part I of this act, — so as to read as follows: — *Section 209.* Two railroad corporations, which are incorporated under the laws of this commonwealth, and whose railroads enter upon or connect with each other, may contract that either corporation shall perform all the transportation upon and over the railroad of the other; and any such corporation may lease its railroad to any other

1906, 463, Part II, § 209 amended.

such corporation; but the facilities for travel and business on either of the railroads of said corporations shall not thereby be diminished. Such leases shall be upon such terms as the directors agree, and as a majority in interest of the stockholders of both corporations at meetings called for the purpose approve, subject to the provisions of section sixty-seven of Part I of this act. The income arising from such contracts or leases shall be subject to the provisions of law relative to the right of the commonwealth to purchase the railroads of the railroad corporations or to reduce their tolls, in the same manner as that arising from the use of the railroads. Copies of such contracts or leases shall be deposited with the board of railroad commissioners, and full statements of the facts shall be set forth in the next annual return of such corporations. The provisions of this section shall not authorize a lease or contract between two railroad corporations, each of which has a terminus in the city of Boston. The railroads of two railroad corporations shall be considered to enter upon or connect with each other, within the meaning of this section, if one of such railroads enters upon, connects with, or intersects a railroad leased to the other or operated by it under a contract as herein authorized.

Penalty.

SECTION 9. A railroad corporation, as hereinbefore designated, which violates the provisions of the first three sections of this act, shall be punished by a fine of ten thousand dollars for each offence; and any officer or agent of such railroad corporation who procures, aids or abets such corporation in any violation of said sections, and any partnership, trustee or other person who procures, aids or abets in any violation thereof, shall be punished by fine of one thousand dollars or by imprisonment for not more than one year nor less than six months, or by both such fine and imprisonment.

Jurisdiction to enforce.

SECTION 10. The supreme judicial court shall have jurisdiction in equity upon petition of the attorney-general or of any stockholder in such domestic railroad company to compel the observance, and to restrain any violation, of the provisions of this act.

Not to ratify previous acts.

SECTION 11. Nothing in this act contained shall be construed as sanctioning or ratifying any acquisition heretofore made by any corporation owning, leasing, or operating a railroad in this commonwealth, or by any person, association, trust, or corporation acting in its behalf or controlled by it, of any shares or a beneficial interest in any shares of stock in a domestic railroad company.

SECTION 12. This act shall take effect upon its passage. [*Approved June 28, 1907.*]

Repeal.

SECTION 68. Sections twenty-one, twenty-two, twenty-three, twenty-four and twenty-five of chapter one hundred and eight of the Revised Laws, sections eight, nine, ten, eleven, twelve, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, seventy-five, seventy-six, one hundred and thirty-four, one hundred and thirty-five, one hundred and thirty-six, one hundred and thirty-seven, one hundred and thirty-eight, one hundred and thirty-nine, one hundred and forty-nine, one hundred and fifty, one hundred and fifty-one, one hundred and fifty-two, one hundred and fifty-three, one hundred and fifty-four, one hundred and fifty-five, one hundred and fifty-six, one hundred and fifty-seven, one hundred and fifty-nine, one hundred and sixty, one hundred and sixty-nine,

two hundred and twenty-three, two hundred and twenty-four, two hundred and fifty-one, two hundred and sixty, two hundred and sixty-two, two hundred and sixty-three, two hundred and sixty-seven and two hundred and seventy-eight of chapter one hundred and eleven of the Revised Laws, sections sixty-three and ninety-four of chapter one hundred and twelve of the Revised Laws, section nineteen of chapter one hundred and twenty-five of the Revised Laws, chapters two hundred and ninety-eight, four hundred and two, four hundred and thirty-two, four hundred and forty, five hundred and seven and five hundred and thirty-three of the acts of the year nineteen hundred and two; chapters one hundred and seventy-three, two hundred and ninety-seven and four hundred and seventy-eight of the acts of the year nineteen hundred and three; chapters ninety-six, two hundred and sixty-five, three hundred and fifty-seven and four hundred and twenty-nine of the acts of the year nineteen hundred and four; chapter four hundred and eight of the acts of the year nineteen hundred and five; and, so far only as they apply to railroads or street railways or to railroad corporations or street railway companies or to their officers, agents or employees, sections thirteen, fourteen, fifteen, sixteen, seventeen, eighteen and twenty of chapter one hundred and eight of the Revised Laws, sections seventeen and eighteen of chapter one hundred and twenty-five of the Revised Laws and section thirty-nine of chapter one hundred and sixty-seven of the Revised Laws are hereby repealed.

Construction
of provisions,
etc.

SECTION 69. The provisions of this act so far as they are the same as those of existing statutes, shall be construed as a continuation thereof and not as new enactments, and a reference in a statute which has not been repealed to provisions of law which have been wholly or partially revised and re-enacted herein shall be construed as applying to such provisions as incorporated in this act. The repeal of a law by this act shall not affect any act done, ratified or confirmed, or any right accrued or established, or any action, suit or proceeding commenced under any of the laws repealed before the repeal took effect, or any action, suit or prosecution pending at the time of the repeal for an offence committed, or for the recovery of a penalty or forfeiture incurred, under any of the laws repealed, but the proceedings shall, when necessary, conform to the provisions of this act. Any provision of this act by which a punishment, penalty or forfeiture is mitigated may be extended and applied to any judgment pronounced after said repeal. Whoever, when said repeal takes effect, holds an office under any of the laws repealed shall continue to hold it according to the tenure thereof unless it is abolished or unless a different provision relative thereto is made by this act.

Proceedings,
etc., not
affected.

PART II.
OF RAILROAD CORPORATIONS.

SECTION	SECTION
1-2. Matters of construction.	129-204. Equipment and operation.
3-5. Corporations subject to the provisions of the chapter.	(a). Drawbridges (129-136).
6-7. Rights reserved by the commonwealth.	(b). Stations (137-140).
8-12. Special charters.	(c). Switches, bridge guards, etc. (141-143).
13-28. Incorporation under general laws.	(d). Signals, etc., at crossings (144-156).
29-30. Organization.	(e). Equipment of engines and cars (157-180).
31-32. Officers.	(f). Fares, tolls, charges, etc. (181-183).
33-39. Meetings.	(g). Transportation of passengers (184-191).
40-47. Capital stock.	(h). Transportation of mails (192-194).
48-56. Bonds and mortgages.	(i). Transportation of merchandise (195-201).
57-62. Taking securities of other corporations.	(j). Transportation of milk (202-204).
63-64. Stock and scrip dividends.	205-210. Connecting railroads.
65-70. Issue of capital stock, bonds, coupon notes and other evidences of indebtedness.	211-217. Taxation.
71-125. Location and construction of railroad.	218-222. Liens for labor and materials.
(a). Conditions precedent (71-72).	223-225. Change of name.
(b). Laying out railroad (73-81).	226-231. Dissolution.
(c). Taking land and damages therefor (82-100).	232-241. Offences and penalties.
(d). Embankments, fences, etc. (101-104).	242-247. Accidents.
(e). Crossings (105-125).	248-250. Books and returns.
126. Branches and extensions.	251-252. Railroads for private use.
127-128. Opening the railroad for use.	253-257. Corporations to construct railroads in foreign countries.

MATTERS OF CONSTRUCTION.

Definitions.
1874, 372, § 2.
P. S. 112, § 1.
1892, 110.
1898, 578, § 1.
1901, 503.
R. L. 111, § 1.

SECTION 1. In this act unless the context otherwise requires: "Railroad and railways" means all railroads and railways except tramways in mines and marine railways.

"Railroad" means a railroad or railway of the class usually operated by steam power.

"Railroad corporation" means the corporation which lays out, constructs, maintains or operates a railroad of the class usually operated by steam power.

"Board of aldermen" or "selectmen" includes the board or other authority exercising the powers of a board of aldermen or of selectmen; but nothing herein shall be construed as affecting the veto power of a mayor of any city.

"Public way" means any way laid out by public authority.

Application to certain matters arising in Boston.
1874, 372, § 5.
1881, 91, § 1.
P. S. 112, § 2.
1885, 194, § 2.
R. L. 111, § 2.

SECTION 2. The duties imposed by the provisions of this act upon county commissioners as a tribunal of original jurisdiction relative to the fixing of routes or to the location, construction, maintenance and operation of railroads shall, in the city of Boston, unless it is otherwise expressly provided, devolve upon the board of aldermen of said city. When, in cases arising in said city, a jury is required, application therefor shall be made to the superior court in the manner prescribed in section ninety of chapter forty-eight of the Revised Laws, and duties imposed

upon the county commissioners by reference or appeal from the board of aldermen of other cities shall devolve upon the board of railroad commissioners.

Revised Laws, Chapter 48, § 90.

SECTION 90. The damages sustained in any case described in the preceding section shall be paid by the city of Boston, and said city or any party interested may, within the time specified for a like purpose in section twenty-eight, file a petition for a jury in the superior court for the county of Suffolk, and thereupon, after such notice as the court shall order, a trial shall be had in said court in the same manner as other civil cases are there tried by jury and, on request of either party, the jury shall take a view.

2 Met. 225.
12 Gray, 209.
14 Gray, 214.

3 Allen, 538.
99 Mass. 236.
106 Mass. 553.

183 Mass. 421.
197 Mass. 412.
See 1906. 214, 258, 393.

Application
for jury to
superior court.
View.
1821, 109, § 8.
R. S. 24, § 55.
1849, 200.
G. S. 43, § 79.
1870, 75, § 2.
1878, 75, § 2.
P. S. 49, § 86.
1888, 397.
1892, 415, § 3.
20 Pick. 201.

SECTION 3. Railroad corporations which have been heretofore established in this commonwealth shall be subject to the provisions of Parts I and II; which, so far as inconsistent with charters granted since the eleventh day of March in the year eighteen hundred and thirty-one, shall be an alteration and amendment thereof; but the provisions of this section shall not impair the validity of any special power heretofore conferred by charter or other special act upon a particular railroad corporation which had exercised such power before the first day of February in the year eighteen hundred and seventy-five, or prevent the continued exercise thereof conformably, so far as may be, to the provisions of this act.

Corporations
subject to this
chapter.
R. S. 39, § 45.
G. S. 63, § 1.
1874, 372, § 4.
P. S. 112, § 3.
R. L. 111, § 3.
174 Mass. 379.

SECTION 4. A railroad corporation chartered by the concurrent legislation of this and other states shall, as regards any portion of its railroad lying within this commonwealth, be entitled to all the benefits and be subject to all the liabilities of the railroad corporations of this commonwealth.

— chartered
by concurrent
legislation.
1874, 372,
§ 169.
P. S. 112, § 4.
R. L. 111, § 4.

SECTION 5. If a railroad which has been laid out and constructed by one corporation is lawfully maintained and operated by another corporation, the latter corporation shall be subject to the provisions of this act respecting or arising from the maintenance and operation of such railroad, as if such railroad had been laid out and constructed by it. If a railroad is lawfully maintained and operated by trustees, they shall in like manner be subject to the provisions of law respecting or arising from the maintenance and operation of such railroad which apply to the corporation for whose stockholders or creditors they are trustees.

— or trustees
operating rail-
roads of other
corporations.
1874, 372, § 3.
P. S. 112, § 5.
R. L. 111, § 5.
127 Mass. 574.
174 Mass. 379.

RIGHTS RESERVED BY THE COMMONWEALTH.

SECTION 6. The provisions of this act shall not impair the rights of the commonwealth as asserted or reserved in previous statutes, and the commonwealth may, at any time during the continuance of the charter of a railroad corporation after the expiration of twenty years from the opening of its railroad for use, purchase of the corporation its railroad and all its fran-

Rights re-
served by com-
monwealth.
R. S. 39, § 84.
G. S. 63, § 138.
1872, 53, § 18.
1874, 372,
§§ 178, 180.
P. S. 112,
§§ 6, 7.

R. L. 111, § 6.
See 1910, 187;
1912, 725.

Common-
wealth may
take railroad.
1870, 325, § 2.
1874, 372,
§ 181.
P. S. 112, § 8.
R. L. 111, § 7.

[For R. L. 48,
§ 90, see
page 49.]

Petition for
charter to be
accompanied
by report of
engineer,
map, etc.
1833, 176.
R. S. 39, § 46.
1848, 327, § 1.
1849, 131, § 2.
G. S. 63, § 13.
P. S. 112, § 29.
R. L. 111, § 30.

Notice of cer-
tain petitions
to be pub-
lished.
1831, 43, § 1.
1832, 59.
R. S. 2, §§ 7, 8.
1857, 261.
§§ 1-4.
G. S. 2,
§§ 8-11.
1871, 381, § 11.
P. S. 2, §§ 5-8.
1885, 24, § 1.
1890, 302.
114 Mass. 592,
599, 600.

Deposit of
petitions.
1857, 261, § 5.
G. S. 2, § 12.
1862, 91, § 3.
P. S. 2,
§§ 9-14.

chise, property, rights and privileges by paying therefor such amount as will reimburse to it the amount of capital paid in, with a net profit thereon of ten per cent a year from the time of the payment thereof by the stockholders to the time of the purchase.

SECTION 7. The commonwealth may, at any time after one year's notice in writing to a railroad corporation, take and possess its railroad, franchise and other property; and shall pay therefor such compensation as may be awarded by three commissioners, who shall be appointed by the supreme judicial court, who shall be sworn to appraise the same justly and fairly, and who shall estimate and determine all damages sustained by it by such taking. A corporation which is aggrieved by their determination may have its damages assessed by a jury in the superior court for the county of Suffolk, in the manner provided in section ninety of chapter forty-eight of the Revised Laws.

SPECIAL CHARTERS.

SECTION 8. A petition to the general court for a charter for a railroad corporation shall not be acted upon, unless it is accompanied by a map of the route on an appropriate scale, with a profile thereof on a vertical scale of ten to one as compared with the horizontal scale, and by the report of a competent engineer, based on actual examination and survey, showing the kind and amount of excavation, filling, bridging and masonry required, the grades, the number of highways and of other railroads, and of navigable streams and tide waters, to be crossed, and the manner of crossing the same, the general profile of the surface of the country through which the railroad is to pass, the feasibility of the route, the manner of constructing the railroad, and a detailed estimate of the cost of construction.

PETITIONS TO THE GENERAL COURT.

Revised Laws, Chapter 3, §§ 5, 7.

SECTION 5. Whoever intends to present to the general court a petition for the incorporation of a city or town, for the division of an existing city or town, for the incorporation of a railroad, street railway, elevated railroad or canal company or for the amendment, alteration or extension of the charter or corporate powers or privileges of any such company, whether specially incorporated or organized under general laws, or for authority to take water for a water supply, or relative to building structures over navigable or tide waters, shall give notice of such petition by publishing a copy thereof once in each of three successive weeks in such newspaper or newspapers as the secretary of the commonwealth, having regard to the locality of the interests involved in such petition, shall direct; the last publication to be made at least fourteen days before the session at which the petition is to be presented.

SECTION 7. On or before the first day of January, a petition described in section five shall be deposited in the office of the secretary of the commonwealth and a petition described in section six shall be deposited in the office of the secretary of the board of education, with proof of

publication satisfactory to the secretary with whom it is so deposited, and he shall transmit it to the general court during the first week of the session with an endorsement that the required publication has been made.

1885, 24, § 2.
1896, 381, § 2.
[2 Op. A. G.
238.]
1912, 481, § 2.

SECTION 9. Plans and profiles which may be presented to a committee of the general court in the hearing of a petition for such a charter shall be deposited by it in the state library,

P. S. 112, § 30.

R. L. 111, § 31.

Plans, etc., to be deposited in state library.
1848, 140.
G. S. 63, § 14.

SECTION 10. Such petition shall not be acted upon, until notice thereof has been published according to law, designating the route with such certainty as to give reasonable notice to all persons interested therein that their rights may be affected by the granting of the petition, and that they may have an opportunity to appear and object thereto.

Petition not to be acted upon until notice, etc.
1833, 176.
R. S. 39, § 47.
G. S. 63, § 15.
P. S. 112, § 31.
R. L. 111, § 32.

SECTION 11. Every charter shall confine the railroad within the limits indicated by the notice required in the preceding section, shall specify the several cities and towns through which the railroad may pass, and shall otherwise designate the route thereof with as much certainty as the nature of the case will admit.

Railroad to be within limits specified.
R. S. 39, § 48.
G. S. 63, § 16.
P. S. 112, § 32.
R. L. 111, § 33.

SECTION 12. The route of the railroad of a corporation established by special charter, and of its branches and extensions, shall be fixed according to the provisions of sections twenty and twenty-one except so far as they may have been fixed by special statute; and such railroad, branches and extensions shall be located and constructed according to the provisions of this act regulating the location and construction of railroads by corporations incorporated under general laws, except that section eighteen shall not apply, if authority so to locate and construct has been granted by special act of the general court.

Chartered railroads to be located, etc., under this chapter.
1874, 372, § 33.
P. S. 112, § 33.
1882, 265, § 3.
R. L. 111, § 34.

INCORPORATION UNDER GENERAL LAWS.

Formation.

SECTION 13. Fifteen or more persons may associate themselves by a written agreement of association with the intention of forming a railroad corporation.

P. S. 112, § 34.

R. L. 111, § 35.

124 Mass. 368.

201 Mass. 579.

Incorporation of railroad corporations.
1872, 53, § 1.
1874, 372, § 19.

SECTION 14. The agreement of association shall state:—

(a) That the subscribers thereto associate themselves with the intention of forming a railroad corporation.

Agreement of association, corporate name, etc.
1872, 53, § 2.
1874, 298; 372, § 20.

(b) The corporate name assumed, which shall be one not in use by any other railroad corporation in this commonwealth, or, in the judgment of the board of railroad commissioners, so similar thereto as to be likely to be mistaken for it, and which shall contain the words, "railroad corporation", at the end thereof.

1878, 236, § 1.
P. S. 112, § 35.
R. L. 111, § 36.
R. L. 109, § 8.

(c) The termini of the railroad.

(d) The length of the railroad, as nearly as may be.

(e) The name of each county, city and town in which the railroad is to be located.

(f) The gauge of the railroad, which shall be either four feet eight and one half inches, or three feet.

(g) The total amount of the capital stock of the corporation, which shall be not less than ten thousand dollars for each mile, if the gauge is four feet eight and one half inches, and not less than five thousand dollars for each mile, if the gauge is three feet.

(h) The par value of the shares, which shall be one hundred dollars.

(i) The names and residences of at least five persons, who shall be subscribers to the agreement of association, to act as directors until others are chosen and qualified in their stead.

Each associate shall subscribe to the agreement of association his name, residence, post office address, and the number of shares of stock which he agrees to take; but no subscriber shall be bound to pay more than ten per cent of the amount of his subscription unless a corporation is incorporated.

Associates' authority. 1872, 53, §§ 3, 4. 1874, 372, § 21. P. S. 112, 36. R. L. 111, 37.

SECTION 15. The associates may from time to time, at a meeting called for the purpose, reduce the amount of the capital stock, but not below the limit prescribed in the preceding section; and they may, in like manner, change the gauge of their railroad to the other gauge allowed by said section. The directors shall appoint a clerk and a treasurer, who shall hold their respective offices until a clerk and a treasurer of the corporation are chosen and qualified in their stead. The directors shall fill any vacancy in their board, or in the office of clerk or treasurer, before the organization of the corporation.

Publication of agreement of association. 1872, 53, § 5. 1874, 372, § 22. P. S. 112, 37. R. L. 111, 38.

SECTION 16. The directors, before fixing the route of the railroad as hereinafter provided, shall cause a copy of the agreement of association to be published in a newspaper, if any, published in each of the cities and towns in which the railroad is to be located, and if, in any county, a newspaper is published in none of said cities and towns therein, in such newspaper published in said county as shall be designated by the board of railroad commissioners, at least once in each of three successive weeks; and, three weeks before fixing said route, shall also cause a copy of said agreement to be posted in two or more public places in each of said cities and towns in which said railroad is to be located; and the sworn certificate of the clerk shall be conclusive evidence of such publication and posting.

Map of route, report of engineer and estimates. 1872, 53, § 6; 180, § 3. 1874, 372, § 23. P. S. 112, 38. R. L. 111, 39. 124 Mass. 375.

SECTION 17. The directors shall prepare a map of the route on an appropriate scale, with a profile thereof on a vertical scale of ten to one as compared with the horizontal scale, and shall procure the report of a competent engineer, based on actual examination and survey, showing the kind and amount of excavation, filling, bridging and masonry required, the grades, the number of highways and of other railroads, and of navigable streams and tide waters, to be crossed, and the manner of crossing the same, the general profile of the surface of the country through which the railroad is to pass, the feasibility of the route, the manner of constructing the railroad, and a detailed estimate of the cost of construction.

SECTION 18. After compliance with the provisions of sections thirteen to sixteen, inclusive, and within thirty days after the first publication of notice of the agreement of association therein required, the directors therein named shall apply to the board of railroad commissioners for a certificate that public convenience and necessity require the construction of a railroad as proposed in such agreement. If said board refuses to issue such certificate, no further proceedings shall be had, but the application may be renewed after one year from the date of such refusal.

Certificate of public convenience and necessity. Exigency. 1882, 265, § 1. R. L. 111, § 40.

SECTION 19. The directors shall submit said map and report to the board of aldermen of every city and to the selectmen of every town named in the agreement of association, who shall thereupon appoint a time and place for a hearing, of which notice shall be given by publication in a newspaper published in said city or town, or if none is published therein, in such newspaper published in the county in which said city or town is situated as shall be designated by the board of railroad commissioners, at least once in each of two successive weeks, the last publication to be at least two days before the hearing; and by posting copies of said notice in two or more public places in said city or town at least two weeks before such hearing.

Submission of map, etc., to board of aldermen, etc. 1873, 121, § 2. 1874, 372, § 24. P. S. 112, § 39. R. L. 111, § 41.

SECTION 20. If the board of aldermen of a city or the selectmen of a town named in the agreement of association, after such notice, exhibition of the map and the hearing, agree with the directors as to the said route or as to any route of the railroad in said city or town, they shall in such agreement fix the route, and sign and give to the directors a certificate setting it forth.

Route may be agreed upon. 1872, 53, § 7; 180, § 3. 1874, 372, § 25. P. S. 112, § 40. R. L. 111, § 42. 124 Mass. 376.

SECTION 21. If they fail so to agree, the directors may petition the board of railroad commissioners to fix the route in said city or town; and said board, after notice to said board of aldermen or selectmen, shall hear the parties, and fix the route in such city or town, and make a certificate setting forth the route as fixed by it, which shall be certified by its clerk to the directors. The costs of the petition shall be paid by the directors. All variations from the route first proposed shall be made upon the map.

— may be fixed by board of railroad commissioners in cases. 1872, 53, § 8; 180, § 3. 1874, 372, § 26. P. S. 112, § 41. R. L. 111, § 43. 124 Mass. 376.

SECTION 22. The route fixed under the provisions of the two preceding sections may include such spurs, branches and connecting and terminal tracks in any city or town as may be necessary to enable the corporation conveniently to collect and deliver passengers and freight therein; but no such branches, spurs or connecting or terminal tracks shall be laid longitudinally within the limits of a public way without the consent of the board of aldermen or the selectmen, who, in giving such consent, may impose such conditions as to the location, construction and use thereof as may be agreed upon between themselves and the directors. A corporation which owns or operates any such tracks so laid longitudinally in a public way shall, in respect to the same, be liable to the city or town for all loss or

Spurs and branches. 1873, 121, § 3. 1874, 372, § 27. P. S. 112, § 42. R. L. 111, § 44. 124 Mass. 376.

damage caused to it by the construction and use of such tracks and by the negligence or default of the agents or workmen of such corporation on such way.

Certificate,
map and
report to be
deposited with
board of
railroad com-
missioners.
1872, 53, § 9.
1874, 372, § 28.
P. S. 112, 43.
R. L. 111, 45.

SECTION 23. When the amount of capital stock named in the agreement of association has been subscribed in good faith by responsible persons, and ten per cent of the par value of each share has been actually paid in cash to the treasurer, the directors, clerk and treasurer shall annex to the agreement of association their certificate setting forth these facts, and that it is intended in good faith to locate, construct, maintain and operate the railroad upon the route fixed, shall also annex to said agreement the certificate of publication specified in section sixteen, and the several certificates fixing the route, shall present the same for inspection to the board of railroad commissioners, and shall at the same time deposit in the office of said board the report of the engineer and the map.

Certificate of
compliance.
Filing.
Certificate of
incorporation.
1872, 53, § 10.
1874, 372, § 29.
1881, 161.
P. S. 112, § 44.
R. L. 111, 46.

SECTION 24. When it is shown to the satisfaction of the board of railroad commissioners that the requirements of this chapter preliminary to the incorporation of a railroad corporation have been complied with, and that an amount sufficient in its judgment to pay all damages immediate or consequential which may be occasioned by laying out, making and maintaining the railroad, or by taking any land or materials therefor, has in good faith been paid in cash to the treasurer, and when said board is satisfied by a bond, or such other assurance of good faith as it may consider necessary and require, that said amount will remain in the hands of said treasurer until it is drawn out for the lawful expenditures of the corporation, the clerk of said board, upon its order, shall annex to the agreement of association a certificate stating that such requirements have been complied with. The directors shall thereupon file the agreement of association, with all the certificates annexed thereto, in the office of the secretary of the commonwealth; who, upon the payment to him of a fee of fifty dollars, shall receive and preserve the same in form convenient for reference and open to public inspection, and shall thereupon issue a certificate of incorporation substantially in the following form:—

COMMONWEALTH OF MASSACHUSETTS.

Form of
certificate.

Be it known that whereas [names of the subscribers to the agreement of association] have associated themselves with the intention of forming a corporation under the name of the [name of the corporation], for the purpose of locating, constructing, maintaining and operating a railroad [description of the railroad as in the agreement of association], and have complied with the statutes of this commonwealth in such cases made and provided: Now, therefore, I secretary
of the commonwealth of Massachusetts, do hereby certify that the persons aforesaid, their associates and successors, are legally established as a corporation under the name of the [name of the corporation], with all the powers and privileges, and subject to all the duties, liabilities and restrictions, set forth in all general laws which now are or hereafter may be in force relating to railroad corporations.

In witness whereof, I have hereunto subscribed my official signature, and affixed the Great Seal of said commonwealth, this _____ day of _____, in the year _____ [day, month and year.]

The secretary of the commonwealth shall sign the certificate of incorporation, and cause the Great Seal of the commonwealth to be thereto affixed, and such certificate shall have the force and effect of a special charter. The secretary of the commonwealth shall also cause a record of the certificate of incorporation to be made, and such certificate, or such record, or a certified copy thereof, shall be conclusive evidence of the existence of such corporation.

Certificate to be recorded.

SECTION 25. If the capital stock fixed in the agreement of association is found to be insufficient for the construction and equipment of the railroad, the corporation at a meeting called for the purpose may, subject to the provisions of section sixty-five, increase the same, from time to time, to the amount necessary for those purposes. It may, at a meeting called for the purpose, reduce the amount of the capital stock, but not below the limit prescribed in section fourteen. It may, also, in like manner, change the gauge to the other authorized gauge; but a corporation organized to construct its railroad on a gauge of three feet shall not change such gauge to four feet eight and one half inches without complying with all provisions of law relative to the capital stock of railroads of the broad gauge; and the fact that such provisions have been complied with shall be shown to the satisfaction of the board of railroad commissioners, and indorsed by its clerk upon the certificate of such change of gauge before it is filed in the office of the secretary of the commonwealth. A certificate of the increase or reduction of capital or change of gauge shall, within thirty days thereafter, be filed in the office of the secretary of the commonwealth.

Increase and reduction of capital stock.
1872, 53, § 15.
1873, 121, § 1.
P. S. 112, § 45.
R. L. 111, § 48.

Change of gauge regulated.
1879, 156.

SECTION 26. The agreement of association, and all proceedings thereunder, including the fixing of the route, shall be void, unless the certificate of incorporation is issued within one year after the time the route is fixed as provided in section twenty or twenty-one.

Proceedings void.
1882, 265, § 2.
R. L. 111, § 47.

SECTION 27. If a corporation does not begin the construction of its railroad and expend thereon at least ten per cent of the amount of its original capital stock within two years after the date of its certificate of incorporation, and does not complete and open its railroad for use within four years after said date, its corporate powers and existence shall cease.

Limit of time for construction of railroad.
1872, 53, § 16.
P. S. 112, § 45.
R. L. 111, § 48.

SECTION 28. A corporation which has a railroad of the gauge of three feet shall not begin running its trains, until its paid-up capital stock is equal to one half of its cost, including equipment.

Capital stock of narrow-gauge railroads.
1874, 298.
P. S. 112, § 45.
R. L. 111, § 48.

ORGANIZATION.

SECTION 29. Upon the issue of such certificate of incorporation, the first meeting of the incorporators shall be called by a notice signed by a majority of the directors; and such notice

First meeting of incorporators.
R. L. 109.
§§ 13, 14.

R. L. 110, § 17.
R. L. 111, § 48.
See 1903, 437,
§ 9.

shall state the time, place and purposes of the meeting. A copy of such notice shall, seven days at least before the day appointed for the meeting, be given to each incorporator or left at his residence or usual place of business, or deposited in the post office, postage prepaid, and addressed to him at his residence or usual place of business, and another copy thereof, and an affidavit of the clerk that the notice has been duly served, shall be recorded with the records of the corporation. If all of the incorporators shall in writing waive such notice, and fix the time and place of the meeting, no notice shall be required.

Organization.
1851, 133,
§§ 4, 5.
G. S. 61, § 5.
1870, 224, § 10.
P. S. 106, § 20.
R. L. 110, § 19.
See 1903, 437,
§ 10.

SECTION 30. At such first meeting, or at any adjournment thereof, the incorporators shall organize by the adoption of by-laws, and by the election, by ballot, of not less than five directors. The clerk appointed by the directors under section fifteen shall make and attest a record of the proceedings until the clerk has been chosen and sworn, including a record of such choice and qualification.

OFFICERS.

Officers.
R. L. 110, § 22.
R. L. 111, § 58.
See 1903, 437,
§ 17.

SECTION 31. The business of every corporation shall be managed and conducted by a president, a board of not less than five directors, a clerk, a treasurer and such other officers and such agents as the corporation by its by-laws shall authorize.

Election of
officers.
R. L. 110,
§§ 22, 24.
R. L. 111, § 58.
See 1903, 437,
§ 18.

SECTION 32. The directors shall be elected annually by the stockholders by ballot, and the president shall be elected annually by and from the board of directors, and the treasurer and the clerk annually by said board. Every director, unless the by-laws otherwise provide, shall be a stockholder. The treasurer may be required to give a bond for the faithful performance of his duty in such sum and with such sureties as the by-laws may prescribe. The clerk, who shall be a resident of this commonwealth, shall be sworn, and shall record all votes of the corporation in a book to be kept for that purpose. The officers of a corporation shall hold office for one year and until their successors are chosen and qualified. The manner of choosing or of appointing all other agents and officers and of filling all vacancies shall be prescribed by the by-laws, and, in default of provision by such by-laws, vacancies may be filled by the board of directors.

Acts of 1907, Chapter 282.

An Act relative to Changes in Officers of Domestic Corporations.

Changes in
officers,
notice, etc.
Amended by
1908, 180.

SECTION 1. Whenever any change is made in the officers of a domestic corporation the corporation shall forthwith file in the office of the commissioner of corporations a certificate of such change, signed and sworn to by the president, clerk and a majority of its directors.

Clerk to be
resident of
Common-
wealth.

SECTION 2. Any such corporation which omits to make and file a certificate as aforesaid within thirty days after such a change has been made, or which fails to keep a clerk of the corporation in this Commonwealth, shall forfeit not more than five hundred dollars, to be recovered in the manner prescribed by section fifty of chapter four hundred and thirty-seven of the acts of the year nineteen hundred and three.

Penalty.

SECTION 3. Every officer of such corporation who fails to perform any duty imposed upon him by this act shall be liable to a fine of not more than five hundred dollars. [Approved April 6, 1907.]

Penalty for failure, etc.

MEETINGS.

SECTION 33. There shall be an annual meeting of the stockholders, and the time and place of holding it, and the manner of conducting it, shall be fixed by the by-laws. All meetings of stockholders shall, unless the by-laws otherwise provide, be held in the commonwealth; and shall be called, and notice thereof given, in the manner provided in the by-laws of the corporation; or, if the by-laws make no provision therefor, shall be called by the president, and a written or printed notice, stating the place, day and hour thereof, given by the clerk, at least seven days before such meeting, to each stockholder by leaving such notice with him or at his residence or usual place of business, or by mailing it, postage prepaid, and addressed to each stockholder at his address as it appears upon the books of the corporation. Unless the by-laws otherwise provide, a majority in interest of all stock issued and outstanding and entitled to vote shall constitute a quorum. Notices of all meetings of stockholders shall state the purposes for which the meetings are called. No notice of the time, place or purpose of any regular or special meeting of the stockholders shall be required, if every stockholder, or his attorney thereunto authorized, by a writing which is filed with the records of the meeting, waives such notice.

Meetings of stockholders.
R. L. 111, § 55.
See 1903, 437, § 20.

Notice of meeting.

Quorum, etc.

SECTION 34. If, by reason of the death or absence of the officers of a corporation or other cause, there is no person authorized to call or preside at a legal meeting, or if the clerk or other officer refuses or neglects to call it, a justice of the peace may, upon written application of three or more of the stockholders, issue a warrant to any one of them, directing him to call a meeting by giving such notice as is required by law, and may, by the same warrant, direct him to preside at the meeting until a clerk is chosen and qualified, if no officer of the corporation is present who is legally authorized to preside.

Meetings may be called under warrant by justice of the peace in cases.
1833, 49.
R. S. 44, § 4.
G. S. 68, § 5.
P. S. 105, § 11.
R. L. 109, § 15.
See 1903, 437, § 21.

SECTION 35. A special meeting of the stockholders shall be called, and a written or printed notice thereof, stating the time, place and purpose of the meeting, given, by the clerk upon written application of three or more stockholders who are entitled to vote, and who hold at least one tenth part in interest of the capital stock.

Special meetings.
R. L. 111, § 56.
See 1903, 437, § 22.

SECTION 36. A corporation shall not, directly or indirectly, vote upon any share of its own stock.

Voting right of corporation upon its own stock.

R. L. 111 § 57.

See 1903, 437, § 23.

SECTION 37. Stockholders who are entitled to vote shall have one vote for each share of stock owned by them. Stockholders may vote either in person or by proxy. No proxy which is dated more than six months before the meeting named therein shall be accepted, and no such proxy shall be valid after the final adjournment of such meeting.

— of stockholders; proxies.
R. L. 110, § 25.
R. L. 111, § 57.
See 1903, 437, § 24.

Voting right
of fiduciary
stockholders.
1829, 53, § 12.
R. S. 38, § 35.
1838, 98, § 2.
G. S. 68, § 11.

SECTION 38. Executors, administrators, conservators, guardians, trustees or persons in any other representative or fiduciary capacity may vote as stockholders upon stock held in such capacity.

See 1903, 437, § 29.

9 Cush. 192.

R. L. 109, § 17.

101 Mass. 398.

Meetings of
directors.
See 1903, 437,
§ 25.

SECTION 39. Meetings of the board of directors may be held within or without the commonwealth. Any meeting of the board of directors shall be a legal meeting without notice, if each director, who is absent, by a writing which is filed with the records of the meeting, waives such notice.

CAPITAL STOCK.

Stock certifi-
cates.
R. L. 110, § 27.
R. L. 111, § 59.
See 1903, 437,
§ 26.

SECTION 40. Each stockholder shall be entitled to a certificate, which shall be signed by the president and by the treasurer of the corporation, or by such other officers as may be authorized by the by-laws, shall be sealed with its seal, and shall certify the number of shares owned by him in such corporation.

Transfer of
stock.
1833, 187, § 8.
R. S. 39, § 52.
G. S. 63, § 11.
1874, 372, § 44.
1881, 302, § 44.
P. S. 112, § 56.
R. L. 109, § 37.
R. L. 111, § 59.
1903, 423, 437,
§ 28.
12 Gray, 213,
227.
3 Allen, 342.
8 Allen, 15.
134 Mass. 239.
159 Mass. 64.
182 Mass. 555.
1910, 171.

SECTION 41. The delivery of a certificate of stock by the person named as the stockholder in such certificate or by a person entrusted by him with its possession for any purpose to a bona fide purchaser or pledgee for value, with a written transfer thereof, or with a written power of attorney to sell, assign or transfer the same, signed by the person named as the stockholder in such certificate, shall be a sufficient delivery to transfer title as against all persons; but no such transfer shall affect the right of the corporation to pay any dividend due upon the stock, or to treat the holder of record as the holder in fact until it has been recorded upon the books of the corporation, or until a new certificate has been issued to the person to whom it has been so transferred. Such purchaser, upon delivery of the former certificate to the treasurer of the corporation, shall be entitled to receive a new certificate. A pledgee of stock transferred as collateral security shall be entitled to a new certificate if the instrument of transfer substantially describes the debt or duty which is intended to be secured thereby. Such new certificate shall express on its face that it is held as collateral security, and the name of the pledgor shall be stated thereon, who alone shall be liable as a stockholder, and entitled to vote thereon.

Stock books,
and corporate
records.
R. L. 109,
§§ 32-35.
See 1903, 437,
§ 30.

SECTION 42. The certificate of incorporation, and an attested copy of the agreement of association, and of the by-laws, with a reference on the margin of the copy of the by-laws to all amendments thereof, and a true record of all meetings of stockholders, shall be kept by the corporation at its principal office for the inspection of its stockholders. The stock and transfer books of such corporation, which shall contain a complete list of all stockholders, their residences and the amount of stock held by each, shall be kept at an office of the corporation for the inspection of its stockholders. Said stock and transfer books and said attested copies and records shall be competent evidence in any court of this commonwealth. If any officer or agent of a corporation having charge of such copies, books or records re-

fuses or neglects to exhibit them or to submit them to examination as aforesaid, he or the corporation shall be liable to any stockholder for all actual damages sustained by reason of such refusal or neglect, and the supreme judicial court or the superior court shall have jurisdiction in equity, upon petition of a stockholder, to order any or all of said copies, books or records to be exhibited to him and to such other stockholders as may become parties to said petition, at such a place and time as may be designated in the order.

SECTION 43. The directors of a corporation may, unless otherwise provided by the by-laws, determine the conditions upon which a new certificate of stock may be issued in place of any certificate which is alleged to have been lost or destroyed. They may, in their discretion, require the owner of a lost or destroyed certificate, or his legal representative, to give a bond with sufficient surety to the corporation, in a sum not exceeding double the market value of the stock to indemnify the corporation against any loss or claim which may arise by reason of the issue of a certificate in place of such lost or destroyed stock certificate.

SECTION 44. Every corporation shall, once in every five years, publish three times successively in a newspaper in the city of Boston, and also in a newspaper in the county in which the principal office of the corporation is located, a list of all dividends which have remained unclaimed for two years or more and the names of the persons to whose credit such dividends stand.

SECTION 45. The directors may from time to time assess upon each share such amounts, not exceeding in all one hundred dollars on a share, or the price fixed under the provisions of section seventy, as they think proper, and may direct the same to be paid to the treasurer, who shall give notice thereof to the subscribers. If a subscriber has made no payment upon his shares, the directors, thirty days after an assessment has become due, may declare them forfeited, and may transfer them to any responsible person who subscribes for them and pays the assessments then due. If a subscriber neglects, for thirty days after notice from the treasurer, to pay an assessment upon his shares, the directors may order the treasurer, after giving notice of the sale, to sell such shares by public auction to the highest bidder, and, upon the payment by him to the corporation of the unpaid assessments, of interest to the date of sale and of the charges of sale, the shares shall be transferred to him. If within thirty days after the sale the purchaser does not make said payment to the corporation, the sale shall be cancelled, and the subscriber shall be liable to the corporation for the unpaid assessments, interest thereon and charges of sale. If the amount so paid by the purchaser to the corporation is more than the amount for which the shares were sold, the subscriber shall be liable to the purchaser for the deficiency; if it is less, the purchaser shall be liable to the subscriber for the surplus.

Lost certificates.
R. L. 110, § 28.
See 1903, 437,
§ 31.

Unclaimed dividends.
1837, 56.
G. S. 68, § 19.
P. S. 105, § 27.
R. L. 109, § 40.
See 1903, 437,
§ 32.

Assessments upon shares.
R. S. 39, § 53.
1852, 303.
G. S. 63,
§§ 8-10.
1874, 372, § 45.
P. S. 112, § 57.
R. L. 111, § 60.
See 1903, 437,
§ 15.
13 Met. 311.
9 Cush. 15.
1 Gray, 544.
2 Gray, 277.
4 Gray, 61.
5 Gray, 520.
8 Gray, 596.
107 Mass. 508.
110 Mass. 213.
113 Mass. 79.

If a subscriber neglects to pay his assessment for thirty days as above provided, the directors may elect to proceed by an action at law against said delinquent subscriber to recover all amounts due and payable by him with interest. If a judgment rendered in an action against a subscriber remains unsatisfied for thirty days, all amounts previously paid by him shall be forfeited to the company and the directors may offer such shares for sale as above provided.

Increase of capital stock.
1874, 351, § 2;
372, § 48; 384,
§ 1.
P. S. 112, § 60.
1894, 502.
R. L. 111, § 61.

SECTION 46. A railroad corporation, for the purpose of building a branch or extension, or of aiding in the construction of another railroad, or of taking stock in a grain elevator corporation in the organization of which it is an associate, or of erecting and operating grain elevators within this commonwealth, or of building depots, or of abolishing grade crossings, or of making permanent investments or improvements, or of funding its floating debt, or of refunding its funded debt, or for the payment of money borrowed for any lawful purpose, or for other necessary and lawful purposes, may, from time to time, in accordance with the provisions of section sixty-five, increase its capital stock or bonds beyond the amounts fixed and limited by its agreement of association or its charter, or by any special law.

Forfeiture for unauthorized increase of capital stock.
1871, 389.
1874, 372,
§ 177.
P. S. 112, § 61.
R. L. 111, § 62.
109 Mass. 99.
142 Mass. 146.

SECTION 47. If a railroad corporation owning a railroad in this commonwealth and consolidated with a corporation owning a railroad in another state increases its capital stock, or the capital stock of such consolidated corporation, except as authorized by this act, without authority of the general court, or without such authority extends its line of railroad, or consolidates with any other corporation, or makes a stock dividend, the charter and franchise of such corporation shall be subject to forfeiture.

BONDS AND MORTGAGES.

Issue of bonds to fund floating debt.
1854, 286,
§§ 1, 2, 4.
G. S. 63,
§§ 120, 121.
1869, 131, § 1.
1874, 372, § 49.
1875, 58.
1876, 170.
P. S. 112, § 62.
1887, 191.
1894, 462.
1897, 337.
R. L. 111, § 63.
10 Allen, 448,
459.
157 Mass. 40.
171 Mass. 242.
Amended,
1912, 725,
Part II, § 5.
Repealed.
See 1913, 784,
§ 16.
See 1908, 620,
page 61;
1909, 485.

[SECTION 48. A railroad corporation may, by vote at a meeting called for the purpose, in accordance with the provisions of this section and of sections sixty-five and sixty-six, but not otherwise, issue coupon or registered bonds, coupon notes or other evidences of indebtedness payable at periods of more than twelve months from the date thereof to provide means for funding its floating debt, or for the payment of money borrowed for any lawful purpose, and may mortgage or pledge, as security for the payment of such indebtedness, a part or all of its railroad, equipment or franchise, or a part or all of its real or personal property. Such bonds, coupon notes or other evidences of indebtedness may be issued in amounts of not less than one hundred dollars each, payable in periods not exceeding fifty years from the date thereof, and may bear interest not exceeding seven per cent a year, payable annually or semi-annually, to an amount which, including that of bonds, coupon notes or other evidences of indebtedness previously issued, does not exceed in all the capital stock of the corporation actually paid in at the time; *except that, with the approval of the board of railroad commissioners, it may issue bonds, coupon notes and other*

evidences of indebtedness payable at periods of more than twelve months after the date thereof to an amount which, including the amount of all such securities previously issued and outstanding may equal, but shall not exceed, twice the amount of its capital stock at the time actually paid in, provided that such securities shall be secured by a mortgage upon all the property and franchises, present and future, of the company issuing such securities. Such mortgages shall also secure, upon equal terms with such new securities, all bonds, coupon notes and other evidences of indebtedness payable more than twelve months from their dates previously issued by, or the payment of the principal of which shall have been assumed or guaranteed by, the mortgagor, and shall contain a covenant on the part of the mortgagor, that the securities which may be secured by such mortgage shall not exceed in amount twice the amount of the capital stock of the mortgagor company actually paid in at the time when such bonds or other securities shall be issued, as determined under the provisions of chapter six hundred and twenty of the acts of the year nineteen hundred and eight, and such bonds, coupon notes or other evidences of indebtedness shall be recorded by its treasurer in books to be kept in his office. A bond, coupon note or other evidence of indebtedness shall not be issued unless approved by a person appointed by the corporation for that purpose, who shall certify that it is properly issued and recorded.]

Acts of 1908, Chapter 620.

An Act relative to the Issue of Bonds, Coupon Notes and Other Evidences of Indebtedness by Railroad Corporations and Street Railway Companies.

SECTION 1. In computing the amount of capital stock of a railroad corporation, electric railroad, street railway or elevated railway company for the purpose of determining the maximum amount of bonds, coupon notes or other evidences of indebtedness, payable at periods of more than twelve months after the date thereof, under the provisions of sections forty-eight, fifty-seven and sixty-six of Part II, or of section one hundred and eight of Part III, of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six, and under any similar provisions of any special acts limiting the amount of such securities, which a railroad corporation, an electric railroad, a street railway or elevated railway company may issue, to the amount of its capital stock at the time actually paid in, there shall be added to the par value of the capital stock all cash premiums paid into the corporation on all shares issued by such corporation or company subsequent to July ninth, eighteen hundred and ninety-four, under the provisions of chapter four hundred and sixty-two of the acts of the year eighteen hundred and ninety-four or of any similar provisions of law, and the maximum amount of such bonds, notes and other evidences of indebtedness which such corporation or company, unless expressly authorized by its charter or by special law, may issue with the approval of the board of railroad commissioners, shall be limited to the aggregate amount of its issued and outstanding capital stock, determined as provided in this act, and actually paid into its treasury.

1906, 463,
Part II, §§ 48,
57 and 66,
Part III,
§ 108,
amended.
Computation
of amount
of capital
stock when
issuing bonds.
See 1912, 725,
Part I, § 6;
Part II,
§§ 4, 5.

SECTION 2. This act shall take effect upon its passage. [Approved June 12, 1908.]

Acts of 1913, Chapter 784, §§ 15, 16.

Issue of stock, bonds, notes or other evidences of indebtedness by railroads.
[See *Op. Jan. 9, 1914, Bulkeley et al. v. N. Y., N. H. & H. R.R. Co. et als.*]

Amount of issue.

Proposed issue to be authorized by vote.

Application for approval of issue of capital stock, bonds, etc.
[See *Op. Jan. 9, 1914, Bulkeley et al. v. N. Y., N. H. & H. R.R. Co. et als.*]

Decision.

Provisions not to apply to certain railroads.

SECTION 15. A railroad corporation may issue shares of capital stock, bonds, notes or other evidences of indebtedness, for the purpose of funding its floating debt, or for any other lawful purpose, and may mortgage or pledge as security for the payment of such indebtedness a part or all of its railroad, equipment and franchise and a part or all of its real and personal property, including property to be afterward acquired. Any mortgage executed by a railroad company shall secure all bonds, notes and other evidences of indebtedness previously issued and then outstanding on equal terms with any other indebtedness secured by such mortgage. Its bonds, notes or other evidences of indebtedness may be issued by any such corporation to an amount which, when added to the amount of all its then outstanding bonds, notes or other evidences of indebtedness, shall not cause the aggregate amount of all its bonds, notes and other evidences of indebtedness to exceed twice the amount of the capital stock of the corporation actually paid in at the time, as determined under the provisions of chapter six hundred and twenty of the acts of the year nineteen hundred and eight; but such of the bonds issued or to be issued under a mortgage as are deposited to retire at or before maturity, bonds or other evidences of indebtedness previously issued and outstanding at the date of such mortgage while so deposited shall not be taken into account in applying this limitation. No bonds, coupon notes, or other evidences of indebtedness payable at periods of more than twelve months from the date thereof shall be issued unless authorized by a vote of the stockholders at a meeting called for the purpose, and no such bond, coupon note or other evidence of indebtedness shall be issued unless countersigned or certified by a person or trust company appointed by the corporation for that purpose.

SECTION 16. Before any railroad corporation shall issue any shares of capital stock or any bonds, notes or other evidences of indebtedness payable at periods of more than twelve months after the date thereof, it shall apply to the commission for its approval of the proposed issue to such amount as the commission shall determine to be reasonable and proper for the purpose of funding its floating debt properly incurred for lawful purposes, or reasonable and proper for any other lawful purpose set forth in the application for such approval. The commission shall render its decision upon such an application within thirty days after the final hearing thereon. The decision shall be in writing and shall assign the reasons therefor. Any order of the commission approving any such issue of stock, bonds, notes or other evidences of indebtedness may provide for the application of the proceeds thereof to such particular uses as the commission shall by that order or by some subsequent order specify, and the corporation shall not apply such proceeds otherwise than as thus specified in such order or orders. The decision of the commission as to the amount of stock which is reasonably necessary for the purpose for which such stock is proposed to be issued shall be based upon the price at which such stock is to be issued, and the commission shall refuse to approve any particular issue of stock, if, in its opinion, the price at which it is proposed to be issued is so low as to be inconsistent with the public interest. The provisions of this section shall not require a railroad corporation which is incorporated under the laws of one or more other states or foreign countries, as well as under the laws of this commonwealth, to apply to the commission for approval of the issue of shares of capital stock or of bonds, notes or other evidences of indebtedness for the sole ultimate purpose of providing funds for additions to or improve-

ments of property of such corporation or of any corporation controlled by it through lease or stock ownership, if such property has a situs in another state or country by the laws of which such railroad corporation is authorized to operate a railroad therein and to make such additions to or improvements of such property, nor to apply to the commission for approval of the issue of shares of capital stock, bonds, notes or other evidences of indebtedness for paying, funding or refunding indebtedness incurred for such ultimate purpose; but all such proposed issues and the authority therefor shall, before the issue of such securities, be reported to the commission. Except for such ultimate purpose, such a railroad corporation shall not hereafter without the approval of the commission issue any shares of capital stock, or any bonds, notes or other evidences of indebtedness payable at periods of more than twelve months after the date thereof, in exchange for or to pay for shares of capital stock, notes, bonds or other evidences of indebtedness of any other corporation which are hereafter acquired or contracted for; but if the acquisition or holding of such securities by such railroad corporation shall be authorized by the laws of any state or country in which it has been incorporated, and shall also be permitted by the laws of the state or country in which such other corporation has been incorporated, the commission may authorize the acquisition of such securities by such railroad corporation, and may approve the issue of shares of capital stock, bonds, notes or other evidences of indebtedness by such railroad corporation in exchange for or to pay for such securities, provided that the commission shall find that such acquisition and the terms thereof are consistent with the public interest. The supreme judicial court or the superior court shall have jurisdiction in equity, upon the application of the commission, of the attorney general, of any stockholder or of any interested party, to enforce the provisions of this and the preceding section and all lawful orders and decisions, conditions or requirements of said commission made in pursuance thereof. A director, treasurer or other officer or agent of a railroad corporation, who knowingly votes to authorize the issue of, or knowingly signs, certifies or issues stock or bonds contrary to the provisions of this or the preceding section, or who knowingly votes to authorize the application, or knowingly applies the proceeds of such stock or bonds contrary to the provisions of said sections, or either of them, or who knowingly votes to assume or incur, or knowingly assumes or incurs in the name or behalf of such corporation, any debt or liability except for the legitimate purposes of the corporation, shall be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment. Sections fifty and sixty-five of Part II of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six, sections forty-eight and sixty-six of Part II of the same act, as amended by sections four and five of Part II of chapter seven hundred and twenty-five of the acts of the year nineteen hundred and twelve, and all other acts and parts of acts inconsistent with this or the preceding section, so far as they apply to railroad corporations, are hereby repealed.

Proposed issues
to be reported
to commission.

Enforcement
of provisions
of law.

Penalty.

Repeal.

SECTION 49. At the request of the owner or holder of any coupon bonds lawfully issued, the railroad corporation which issued them may issue registered bonds in exchange for them, upon such terms and under such regulations as its directors may prescribe, and with the consent and approval of the trustees, if any, to whom a mortgage or pledge has been executed;

Registered
bonds.
1869, 131,
§§ 2-4.
1874, 372, § 50.
P. S. 112, § 63.
R. L. 111, § 64.

and such registered bonds shall, with the exception of the coupons, correspond in all respects with the coupon bonds for which they are exchanged, and shall be in conformity with all laws authorizing the issue of said coupon bonds. Such exchange shall not affect a mortgage or pledge given as security for the payment of such coupon bonds, and such mortgage or pledge shall remain in full force as security for such registered bonds; and the coupon bonds shall be cancelled and destroyed at the same time that the registered bonds are issued in exchange therefor.

Mortgage to secure bonds previously issued.

1854, 286, § 3.
G. S. 63, § 123.
1874, 372, § 51.
P. S. 112, § 64.
R. L. 111, § 65.

[SECTION 50. A railroad corporation which has issued bonds shall not subsequently execute a mortgage upon its railroad, equipment and franchise or upon any of its real or personal property, without including in and securing by such mortgage all bonds previously issued and all its pre-existing debts and liabilities.]

Repealed as to railroad corporations. 1913, 784, § 16. (See above.)

Securities collectible.

1854, 286, § 5.
G. S. 63, § 122.
1874, 372, § 52.

SECTION 51. All bonds or notes which are issued by a railroad corporation shall be valid and binding, although negotiated and sold by it or its agents at less than par.

P. S. 112, § 65.

R. L. 111, § 66.

Trustees entitled to possession may contract with corporation to operate railroad.

1857, 178, § 1.
G. S. 63, § 124.
P. S. 112, § 66.
R. L. 111, § 67.

SECTION 52. If a railroad corporation, having executed a mortgage of its property, rights and privileges, or of a part thereof, to trustees for the benefit of its general creditors, or of a particular class of creditors, makes default in the performance of the condition of the mortgage, so that the trustees or their successors are entitled to the actual possession and usufruct of the property, rights and privileges therein conveyed, in trust for the purposes specified in the mortgage, the trustees, after entry, instead of retaining actual possession of the mortgaged premises and operating the railroad, may contract with the corporation or other competent party to take or retain for them the possession of the mortgaged premises, and to use and operate the same on its own responsibility, accounting with the trustees for the earnings and income, and paying over the profits and net income periodically, when and as far as may be necessary for the performance of the conditions of the mortgage, if a majority in interest of the bondholders or creditors under the mortgage shall so vote, in person or by proxy, at a meeting called for the purpose, notice of which shall be published ten days before said meeting in two or more daily papers published in the city of Boston, and in at least one newspaper published in each county in which the railroad is located. All liabilities incurred by the corporation or other party in operating the railroad under such contract shall be held as claims against and be paid out of the income, in the same manner and to the same extent as if the property had remained in the actual possession of the trustees and been operated by them.

Trustees in possession to call annual meetings.

1857, 178, § 2, 3.
G. S. 63, §§ 125, 126.

SECTION 53. Trustees in possession of a railroad under a mortgage shall annually call a meeting of the bondholders or creditors for whose security they hold the railroad in trust, to be held in December, of which notice shall be given by publication, at least ten days before such meeting, in two or more

daily newspapers in the city of Boston, and in at least one newspaper in each county in which the railroad is located; and at such meeting they shall submit a report for the year, similar to the annual report of railroad directors to stockholders. If they fail to call such a meeting, five or more bondholders or creditors, whose claims secured by the mortgage amount to not less than ten thousand dollars, may in the same manner call such meeting, to be held in the January following said December.

P. S. 112, §§ 67, 68.
R. L. 111, § 68.

SECTION 54. At the annual meeting held under the provisions of the preceding section, the bondholders or creditors, by a majority in interest vote, may, in person or by proxy, elect three trustees under the mortgage for the ensuing year, and until others are chosen and qualified. And the trustees or any of them or a bondholder or creditor may submit the proceedings of the meeting for confirmation to a justice of the supreme judicial court, in court or at chambers, first giving notice of his intention so to do to the former trustees under the mortgage, to the trustees of all other existing mortgages upon the railroad, and to the corporation, seven days at least before the hearing thereon; which notice may be served by an officer or disinterested person. The justice may hear the parties, ratify the election, and enter such decree as he may find necessary to transfer the property to the new trustees; which decree shall be filed in the office of such clerk of the court as the justice may direct.

Election and confirmation of trustees.
1857, 178, § 4.
G. S. 63, § 127.
P. S. 112, § 69.
R. L. 111, § 69.

SECTION 55. The supreme judicial court shall have jurisdiction in equity of all cases arising under the provisions of the two preceding sections, and of all questions arising out of railroad mortgages, and may summarily remove a trustee under a railroad mortgage, whether he is in possession of the railroad or not, and appoint a new trustee in his stead.

Equity jurisdiction of supreme judicial court.
1857, 178, § 5.
G. S. 63, § 128.
P. S. 112, § 70.
R. L. 111, § 70.
127 Mass. 43.
171 Mass. 244.

SECTION 56. A purchaser of a railroad at a sale under a valid foreclosure of a legal mortgage thereof, and his successors in title, shall, relative to the construction, maintenance and operation of said railroad, be subject to all the duties, liabilities and restrictions, and have all the powers and rights, which the mortgagor was subject to and had at the time of said sale.

Rights of purchaser under foreclosure.
1886, 142, § 1.
R. L. 111, § 74.
171 Mass. 244.

TAKING SECURITIES OF OTHER CORPORATIONS.

SECTION 57. A railroad corporation, unless authorized by the general court or by the provisions of the following five sections, shall not directly or indirectly subscribe for, take or hold the stock or bonds of or guarantee the bonds or dividends of any other corporation; and the amount of the bonds of one or more other corporations subscribed for and held by a railroad corporation, or guaranteed by it conformably to special authority of the general court or the authority given in said sections, with the amount of its own bonds issued in conformity with sections forty-eight and forty-nine, shall not exceed at any time the amount of its capital stock actually paid in in cash.

Taking securities in other corporations.
1868, 347, § 1.
1872, 53, § 17;
180, § 2.
1874, 372, § 53.
P. S. 112, § 74.
R. L. 111, § 77.
197 Mass. 196.
198 Mass. 415.
See 1908, 620, § 1, page 61.
201 Mass. 370.
208 Mass. 552.

Stock in a telegraph company. 1849, 93, § 8. G. S. 63, § 12. 1874, 372, § 54. P. S. 112, § 75.

SECTION 58. A railroad corporation may hold stock in a telegraph company whose telegraph connects two or more places on the railroad to an amount not exceeding two hundred dollars for each mile of railroad so connected. R. L. 111, § 78.

Acts of 1912, Chapter 725, Part II, § 6.

Stock in terminal companies.

SECTION 6. A railroad corporation may acquire, hold, vote, sell, and negotiate the stock and securities of terminal companies now or hereafter organized under the laws of this commonwealth, and may guarantee the bonds of such companies. A railroad corporation may also acquire, hold, maintain and operate steamship companies, ferries, ferry boats and docks.

Guaranty of bonds of steamship companies. 1868, 347, § 2. 1874, 372, § 55. P. S. 112, § 76. R. L. 111, § 79.

SECTION 59. A railroad corporation may guarantee, to an amount not exceeding five per cent of its capital stock, the bonds of any corporation incorporated by the general court for the purpose of carrying freight, passengers and mails between any port of this commonwealth and Europe; or, upon adequate security therefor, may issue its own bonds to the same amount, conformably to the provisions of section forty-eight.

Railroad corporation may become associate in grain elevator corporation. 1874, 384, §§ 1, 2. P. S. 112, § 77, 78. R. L. 111, § 80.

SECTION 60. A railroad corporation may become an associate under the provisions of chapter four hundred and thirty-seven of the acts of the year nineteen hundred and three in the formation of a corporation for the purpose of erecting and operating a grain elevator within this commonwealth, and may take stock in any elevator corporation so organized, and, at all meetings, and in all transactions of such elevator corporation, the president of the railroad corporation, or in his absence any officer appointed by its board of directors, may represent, act and vote in the name of such railroad corporation.

Connecting roads may guarantee each other's bonds. 1870, 325, § 4. 1871, 384. 1874, 372, § 56. P. S. 112, § 79. R. L. 111, § 81.

SECTION 61. If two corporations own and operate connecting railroads, which are wholly constructed, either corporation may guarantee the bonds of the other, upon such terms and to such an extent as may be authorized at a meeting called for the purpose, if the bonds so guaranteed do not exceed the amount of the capital stock of the corporation by which they were issued actually paid in in cash by its stockholders, and if they are in all other respects issued in conformity with law.

Railroad corporations may aid in construction of branches, etc. 1874, 351, § 4; 372, § 57. P. S. 112, § 80. R. L. 111, § 82. 171 Mass. 239.

SECTION 62. A railroad corporation may aid in the construction of any branch or connecting railroad within the limits of this commonwealth, whether connecting by a railroad or steamboat line, by subscribing for shares of stock in such corporation, or by taking its notes or bonds to be secured by mortgage or otherwise, and may vote on all shares of stock so subscribed for and held; but a corporation shall not so subscribe to an amount in excess of two per cent of its paid-up capital stock, or mortgage its property to secure the loans or subscriptions made by any other corporation under the provisions of this section, except by a vote of a majority in interest of the stockholders at a meeting called for that purpose.

Stock or scrip dividends forbidden, when.

SECTION 63. A railroad corporation shall not declare any stock or scrip dividend or divide the proceeds of the sale of

stock or scrip among its stockholders; nor shall any such corporation issue any share of stock to any person unless the par value of the shares so issued is first paid in cash to its treasurer; nor shall it without authority of the general court increase its capital stock beyond the maximum amount fixed by its act of incorporation, or fixed under the provisions of section forty-six.

SECTION 64. A certificate of stock or scrip issued in violation of the provisions of the preceding section shall be void; and each director of the corporation issuing it shall be liable to a penalty of one thousand dollars, to be recovered by indictment in the county in which he resides, or, if he resides in no county, in the county in which he is commorant, or the offence was committed; but if any such director proves, that, before such issue, he filed his dissent in writing thereto with the clerk, or was absent, and at no time voted therefor, he shall not be so liable.

1868, 310, § 1.
1871, 389.
1874, 372,
§ 177.
P. S. 105, § 18;
112, § 61.
1894, 350, § 1.
R. L. 109, § 20.

Liability of
directors.
1868, 310, § 2.
P. S. 105, § 19;
112, § 61.
1894, 350, § 2.
R. L. 109, § 21.

ISSUE OF CAPITAL STOCK, BONDS, COUPON NOTES AND OTHER EVIDENCES OF INDEBTEDNESS.

[SECTION 65. A railroad corporation shall issue only such amounts of stock and bonds, coupon notes and other evidences of indebtedness payable at periods of more than twelve months after the date thereof, as the board of railroad commissioners may from time to time determine to be reasonably necessary for the purpose for which such issue of stock or bonds has been authorized. Said board shall render a decision upon an application for such issue within thirty days after the final hearing thereon. Such decision shall be in writing, shall assign the reasons therefor, shall, if authorizing such issue, specify the respective amounts of stock or bonds, or of coupon notes or other evidences of indebtedness as aforesaid, which are authorized to be issued for the respective purposes to which the proceeds thereof are to be applied, shall, within seven days after it has been rendered, be filed in the office of said board. A certificate of the decision of said board shall, within three days after such decision has been rendered and before the stock or bonds or coupon notes or other evidences of indebtedness as aforesaid are issued, be filed in the office of the secretary of the commonwealth, and a duplicate thereof delivered to the corporation. Such corporation shall not apply the proceeds of such stock or bonds or coupon notes or other evidences of indebtedness as aforesaid to any purpose not specified in such certificate. The provisions of this section shall not require the approval of the board of railroad commissioners to the issue of capital stock or bonds, or of coupon notes or other evidences of indebtedness as aforesaid, authorized by law of this commonwealth, the proceeds of which are to be expended in another state or country, or which are to pay for borrowed money expended in another state or country.]

Issue of capital
stock, bonds,
coupon notes
and other evi-
dences of in-
debtedness.
1875, 161.
P. S. 110, § 7.
1894, 450, § 1;
452, § 1;
462, § 1.
1897, 337, § 1.
R. L. 109, § 24.
[1 Op. A. G.
659.]
See 1908, 620,
636.
See 1912, 725,
Part I, § C.
Repealed.
1913, 784, § 16.

Acts of 1908, Chapter 636.

An Act relative to the Price at which Railroad Corporations and Street Railway Companies shall offer New Stock to their Stockholders.

Increase of
capital stock.
Stockholders
to determine
price of new
shares.
Amended,
1909, 369, § 1.

SECTION 1. Any railroad, street railway, electric railroad or elevated railway company which is in actual possession of and operating a railroad or railway shall, upon any increase of its capital stock, except as provided in the following section, offer the new shares proportionately to its stockholders at such price not less than the par value thereof as may be determined by its stockholders. The directors upon the approval of such increase, as provided in section sixty-five of Part II and section one hundred and seven of Part III of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six, shall cause written notice of such increase to be given to each stockholder of record upon the books of the company at [the date of the vote to increase,] *such date as shall be designated by vote of the directors passed after the approval by the board of such issue*, stating the amount of the increase, the number of shares or fractions of shares to which, according to the proportionate number of his shares at [the date of the vote to increase] *said date designated by vote of the directors* he is entitled, the price at which he is entitled to take them, and fixing a time not less than fifteen days after [the date of such vote to increase] *said date designated by vote of the directors*, within which he may subscribe for such additional stock. Each stockholder may within the time limited subscribe for his portion of such stock, which shall be paid for in cash before the issue of a certificate therefor.

Auction sale
of stock.

SECTION 2. If the increase in the capital stock which is subject to the provisions of the preceding section does not exceed four per cent of the existing capital stock of the company, the directors, without first offering the same to the stockholders, may sell shares by auction to the highest bidder, at not less than the par value thereof, to be actually paid in cash. They may also so sell at public auction any shares, which, after the expiration of the time limited in the notice required by the preceding section, remain unsubscribed for by the stockholders entitled to take them. Such shares shall be offered for sale in the city of Boston, or in such other city or town as may be prescribed by the board of railroad commissioners; and notice of the time and place of such sale shall be published at least five times during the ten days immediately preceding the sale in each of at least three of such daily newspapers as may be prescribed by said board. No shares shall be sold or issued under this or the preceding section for a less amount to be actually paid in cash than the par value thereof.

Board may
refuse to ap-
prove issue,
when.

SECTION 3. The determination by the board of railroad commissioners, under the provisions of section sixty-five of said Part II and section one hundred and seven of said Part III, as to the amount of stock which is reasonably necessary for the purpose for which such stock has been authorized shall, in the case of the corporations described in this act, be based upon the price at which such stock is to be issued as fixed by the stockholders: *provided*, that the board shall refuse to approve any particular issue of stock if, in the opinion of the board, the price fixed by the stockholders is so low as to be inconsistent with the public interest.

Proviso.

Repeal.

SECTION 4. All acts and parts of acts inconsistent herewith are hereby repealed, so far as they apply to corporations described in this act.

SECTION 5. This act shall take effect upon its passage. [*Approved June 13, 1908.*]

Acts of 1909, Chapter 369.

An Act to change the Date when Stockholders in Railroad Corporations and Street Railway Companies may subscribe for New Stock.

SECTION 1. Section one of chapter six hundred and thirty-six of the acts of the year nineteen hundred and eight is hereby amended by striking out the words "the date of the vote to increase", in the fourteenth line, and inserting in place thereof the words:— at such date as shall be designated by vote of the directors passed after the approval by the board of such issue, — by striking out the words "the date of the vote to increase", in the seventeenth line, and inserting in place thereof the words:— said date designated by vote of the directors, — and by striking out the words "the date of such vote to increase", in the nineteenth and twentieth lines, and inserting in place thereof the words:— said date designated by vote of the directors, — so as to read as follows:— *Section 1. [For 1908, 636, § 1, as amended, see above.]*

1908, 636, § 1,
amended.
See 1909, 485.

[SECTION 66. A railroad corporation, unless expressly authorized by its charter or by special law, shall not issue bonds, coupon notes or other evidences of indebtedness payable at periods of more than twelve months after the date thereof to an amount which, including the amount of all such securities previously issued and outstanding, exceeds in the whole the amount of its capital stock at the time actually paid in; *except that, with the approval of the board of railroad commissioners, it may issue bonds, coupon notes and other evidences of indebtedness payable at periods of more than twelve months after the date thereof to an amount which, including the amount of all such securities previously issued and outstanding may equal, but shall not exceed, twice the amount of its capital stock at the time actually paid in, provided that such securities shall be secured by a mortgage upon all the property and franchises, present and future, of the company issuing such securities. Such mortgage shall also secure, upon equal terms with such new securities, all bonds, coupon notes and other evidences of indebtedness payable more than twelve months from their dates previously issued by, or the payment of the principal of which shall have been assumed or guaranteed by, the mortgagor, and shall contain a covenant on the part of the mortgagor that the securities which may be secured by such mortgage shall not exceed in amount twice the amount of the capital stock of the mortgagor company actually paid in at the time when such bonds or other securities shall be issued, as determined under the provisions of chapter six hundred and twenty of the acts of the year nineteen hundred and eight, but this limitation shall not apply to the issue of bonds for the purpose of paying and refunding at maturity bonds lawfully issued prior to the second day of June in the year eighteen hundred and ninety-seven; nor shall it apply to such of the bonds issued or to be issued under a mortgage as are deposited to retire at or before maturity bonds or other evidences of indebtedness previously issued and outstanding at the date of such mortgage, and as do not exceed the par value of the funded*

Limit of issue
of bonds,
coupon notes
and other
evidences of
indebtedness.
1889, 316, § 2.
1897, 337, § 2.
R. L. 109, § 25.
Amended;
1912, 725,
Part II, § 4.
Repealed.
1913, 784, § 16.
See 1908, 630,
§ 1, page 61;
636; 1909, 369.

or other debt so to be retired; and such corporation shall not issue the securities specified in this section unless authorized by vote of its stockholders at a meeting called for the purpose. *Nothing in this section shall be construed as limiting the authority of the board of railroad commissioners under section sixty-five to specify the respective amount of stock or bonds or coupon notes or other evidences of indebtedness as aforesaid which are authorized to be issued for the respective purposes to which the proceeds thereof are to be applied.*]

Acts of 1902, Chapter 441.

An Act to authorize Corporations to issue Preferred Stock.

Issues of preferred stock.

SECTION 1. Every corporation organized under the laws of this commonwealth shall have power to issue preferred stock to an amount not exceeding at any time the amount of the general stock then outstanding, with such preferences and voting powers or restrictions or qualifications thereof as shall be fixed and determined in the by-laws at the organization of the corporation; or after organization, by a two thirds vote of all the stock, or by a by-law adopted by a two thirds vote of all the stock, at a meeting duly called for the purpose.

Subject to all general laws.

SECTION 2. Such stock shall be issued subject to all general laws of the commonwealth governing the issue of capital stock; and each certificate subsequently issued of stock in the corporation shall have fully and plainly printed thereon the by-law or vote of the corporation authorizing the issue of preferred stock.

SECTION 3. This act shall take effect upon its passage. [*Approved June 5, 1902.*]

INVESTMENTS IN RAILROAD BONDS.

Acts of 1908, Chapter 590, § 68.

An Act to codify, revise and amend the Laws relative to Savings Banks and Institutions for Savings.

PART V. — INVESTMENTS.

Amended by 1909, 491, § 8; 1910, 622, § 10; 1912, 680; 1915, 291. See 1912, 128.

SECTION 68. Deposits and the income derived therefrom shall be invested only as follows:—

RAILROAD BONDS.

Massachusetts Railroads.

1887, 196. R. L. 113, § 26, cl. 3, c. See 1913, 291, as to failure of compliance for two successive years.

Third. a. In the bonds or notes, issued in accordance with the laws of this commonwealth, of a railroad corporation incorporated therein the railroad of which is located wholly or in part therein, which has paid in dividends in cash an amount equal to not less than four per cent per annum on all its outstanding issues of capital stock in each fiscal year for the five years next preceding such investment, or in the first mortgage bonds of a terminal corporation incorporated in this commonwealth and whose property is located therein, which is owned and operated, or the bonds of which are guaranteed as to principal and interest, or assumed, by such railroad corporation. Any shares of the capital stock of a railroad corporation leased to such railroad corporation, which are owned by said lessee corporation, shall not be considered as outstanding within the meaning of this subdivision.

SECTION 67. The supreme judicial court or the superior court shall have jurisdiction in equity, upon the application of the board of railroad commissioners, of the attorney-general, of any stockholder or of any interested party, to enforce the provisions of the two preceding sections and all lawful orders and decisions, conditions or requirements of said board made in pursuance thereof.

SECTION 68. A director, treasurer or other officer or agent of a railroad corporation, who knowingly votes to authorize the issue of, or knowingly signs, certifies or issues, stock or bonds contrary to the provisions of sections sixty-five and sixty-six, or who knowingly votes to authorize the application, or knowingly applies the proceeds, of such stock or bonds contrary to the provisions of said sections, or who knowingly votes to assume or incur, or knowingly assumes or incurs in the name or behalf of such corporation, any debt or liability except for the legitimate purposes of the corporation, shall be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment.

SECTION 69. If a corporation which owns or operates a railroad increases its capital stock, such new shares as are necessary to produce the amount of increased capital stock which has been authorized shall, except as provided in the following section, be offered proportionately to its stockholders at such price not less than the market value thereof at the time of increase, as may be determined by the board of railroad commissioners, taking into account previous sales of stock of the corporation and other pertinent conditions, which determination shall be in writing and with the date thereof shall be certified to and recorded in the books of the corporation. The directors, upon the approval of such increase as provided in section sixty-five, and the determination of the market value as hereinbefore provided, shall cause written notice of such increase to be given to each stockholder of record upon the books of the corporation at the close of business on the date of such determination by said board, stating the amount of such increase, the number of shares or fractions of shares to which he, according to the proportionate number of his shares at the date of such determination, is entitled, the price at which he is entitled to take them, and fixing a time, not less than fifteen days after the date of such determination by said board, within which he may subscribe for such additional stock. Each stockholder may, within the time limited, subscribe for his portion of such stock, which shall be paid for in cash before the issue of a certificate therefor.

SECTION 70. If the increase in the capital stock which is subject to the provisions of the preceding section does not exceed four per cent of the existing capital stock of the corporation, the directors, without first offering the same to the stockholders, may sell them by auction to the highest bidder at not less than the par value thereof to be actually paid in cash.

Enforcement of statutes.
1894, 450, § 3;
452, § 3;
462, § 3.
1896, 473.
R. L. 109, § 27.

Penalties.
1894, 450, § 2;
452, § 2;
462, § 2.
R. L. 109, § 28.

New shares to be offered to stockholders upon increase of capital stock.
1870, 179.
1871, 392, § 1.
1873, 39, § 1;
305.
1878, 84, § 1.
1879, 90, § 1.
P. S. 106, § 39;
112, § 58;
113, § 16.
1893, 315, § 1.
1894, 472, § 1.
R. L. 109, § 30.

Stock sold at auction.
1870, 179.
1871, 392, § 2.
1873, 39, § 1;
305; 333.
1874, 372, § 46.
1878, 84, § 2.
1879, 90.
P. S. 106, § 40;

112, § 59;
 113, § 16.
 1893, 315, § 2.
 1894, 472,
 §§ 1, 2.
 R. L. 109, § 31.

They may also so sell at public auction any shares, which, after the expiration of the time limited in the notice required by the preceding section, remain unsubscribed for by the stockholders entitled to take them. Such shares shall be offered for sale in the city of Boston, or in such other city or town as may be prescribed by the board of railroad commissioners; and notice of the time and place of such sale shall be published at least five times during the ten days immediately preceding the sale in each of at least three of such daily newspapers as may be prescribed by said board. No shares shall be sold or issued under this or the preceding section for a less amount to be actually paid in cash than the par value thereof.

LOCATION AND CONSTRUCTION OF RAILROAD.

Conditions Precedent.

Prerequisites
 to location of
 railroad.
 1852, 303, § 1.
 G. S. 63, § 7.
 1871, 333,
 §§ 1, 2.
 1878, 215,
 §§ 1, 2.
 1881, 111,
 §§ 2, 4.
 P. S. 112,
 §§ 85, 86, 136.
 R. L. 111, § 88.

SECTION 71. A railroad corporation shall not locate or begin to construct its railroad or a branch or extension thereof, or enter upon and use land or other property, except for making surveys, until a sworn estimate of the total cost of constructing the same, prepared by its chief engineer, has been submitted to the board of railroad commissioners and approved by it; nor until said board is satisfied that an amount of the capital stock of the corporation equal to at least fifty per cent of such estimated cost has been actually subscribed by responsible parties without any condition which invalidates the subscription, and that twenty per cent of the par value of each share has been actually paid in; and that the authority and consent required by section eighty-two have been obtained; nor until the clerk of said board, upon its order, has filed a certificate with the secretary of the commonwealth that the provisions of this section have been complied with; nor until the corporation has paid to the secretary a fee of fifty dollars for filing such certificate. The supreme judicial court shall have jurisdiction in equity, if said board certifies a location before ascertaining that the authority and consent required by section eighty-two have been obtained. The certificate of a master in chancery or a justice of a court of record for the county in which a subscriber resides that he owns property in his own name equal in value, above all encumbrances, to the amount of his subscription shall be conclusive evidence of his responsibility. If said board refuses its approval to an estimate or a subscription list so submitted, it shall in writing state its reasons therefor in detail at the time and shall include them in its next annual report.

Location not
 to be within
 three miles of
 state house.
 1882, 265, § 4.
 R. L. 111, § 89.

SECTION 72. No railroad or part thereof which is operated by steam power shall hereafter be located or constructed within three miles of the state house without the previous consent in writing of the board of railroad commissioners, and of the board of aldermen of any city or of the selectmen of any town in which the location is sought.

Revised Laws, Chapter 53, §§ 17, 19.

SECTION 17. No highway, town way, street, turnpike, canal, railroad or street railway shall be laid out or constructed over a common or park dedicated to the use of the public, or appropriated to such use without interruption for a period of twenty years; nor shall any part of such common or park be taken for widening or altering a highway, town way or street, except with the consent of the inhabitants of the city or town, after public notice, given in the manner provided in cases of the location and alteration of highways, stating the extent and limits of the portion thereof proposed to be taken. Such consent shall be expressed by vote of the inhabitants, if ten or more voters file a request in writing to that effect with the selectmen or the mayor and aldermen within thirty days after the publication of the notice; in the absence of such request, consent shall be presumed.

Streets, etc., not to be laid out over a common, etc. 1875, 163, § 1. P. S. 54, § 13. 166 Mass. 366. 178 Mass. 300. 184 Mass. 140.

SECTION 19. Land of a public institution belonging to the commonwealth shall not be taken for a highway, town way, street, turnpike, canal, railroad or street railway without leave of the general court.

Taking of lands of a public institution regulated. 1875, 163, § 3. P. S. 54, § 15. [2 Op. A. G. 234.]

Revised Laws, Chapter 87, § 17.

SECTION 17. The land now held and which may hereafter be held by the trustees of any state insane hospital or of the Massachusetts hospital for dipsomaniacs and inebriates in trust for the commonwealth, for the use of the hospital of which they are trustees, shall not be taken for a street, highway or railroad, without leave of the general court specially obtained.

Lands of hospitals not to be taken for streets. 1862, 223, § 2. P. S. 87, § 3. 1889, 414, § 2. 1906, 400.

Revised Laws, Chapter 212, § 69.

SECTION 69. Whoever lays out, opens, or makes a highway or town way, or constructs a railroad or canal, or any other thing in the nature of a public easement, over, through, in or upon any part of an enclosure, which is the property of a city, town, parish, religious society or of private proprietors and is used or appropriated for the burial of the dead, unless authority for that purpose is specially granted by law, or unless the consent of such city, town, parish, religious society or proprietors, respectively, is first obtained, shall be punished by a fine of not more than two thousand dollars or by imprisonment for not more than one year.

Making road, etc., through burial ground. 1834, 187, § 1. R. S. 24, §§ 59, 60; 30, § 21. G. S. 165, § 40. P. S. 207, § 51.

Revised Laws, Chapter 28, § 11.

SECTION 11. Land taken for or held as a park by cities and towns under the provisions of this chapter shall be forever kept open and maintained as public parks; but, except in parks in the city of Boston and in parks comprising less than one hundred acres in extent, structures for shelter, refreshment and other purposes may be erected of such material and in such places as, in the opinion of the fire commissioners, if any, do not endanger buildings beyond the limits of such park; and the provisions of section twenty of chapter fifty-three shall not apply to such buildings. No street or way and no steam railroad or street railway shall be laid out over any portion of such park except in places and in the manner approved by the board of park commissioners.

Parks to be perpetual. 1882, 154, § 10. 1893, 75. 178 Mass. 300.

Revised Laws, Chapter 10, § 20.

SECTION 20. The land now taken by the commonwealth about the state house shall remain an open space, and no railroad or railway shall be constructed or operated in, upon or over the same. A grant made to a railroad or railway corporation shall not be construed to include any portion of said land.

Land around state house to remain open. 1894, 532, § 6.

Revised Laws, Chapter 88, § 2.

Use of land held by trustees. 1895, 503, § 2.

SECTION 2. The land held by said trustees [of the Massachusetts state sanatorium] in trust for the commonwealth for the use of said sanatorium shall not be taken for a street, highway or railroad without leave of the general court specially obtained.

Laying out Railroad.

Location and construction. R. S. 39, § 54. 1853, 351, § 1. G. S. 63, § 17. 1874, 372, § 58. P. S. 112, § 88. R. L. 111, § 90. 9 Met. 553. 4 Cush. 71. 2 Gray, 574. 4 Gray, 301. 14 Gray, 93, 553. 109 Mass. 527. 113 Mass. 277. 118 Mass. 391. 124 Mass. 368. 134 Mass. 14. 141 Mass. 481.

SECTION 73. A railroad corporation may lay out its railroad not more than five rods wide; and for the purpose of cuttings, embankments, and for procuring stone and gravel, and for obtaining land for stations, car houses, roundhouses, freight houses, yards, docks, wharves, elevators and other structures may purchase or take, in the manner provided in section seventy-eight, so much more land as may be reasonably necessary for the proper construction and security, and the convenient operation, of its railroad: provided, however, that the powers conferred upon the county commissioners by said section seventy-eight shall under this act be vested in the board of railroad commissioners.

161 Mass. 387.

167 Mass. 369.

Amended. 1912, 725, Part II, § 2.

Acts of 1912, Chapter 725, Part II, § 2.

1906, 463, Part II, § 73, amended.

SECTION 2. Section seventy-three of Part II of said chapter four hundred and sixty-three is hereby amended by striking out all of the said section after the word "cuttings", in the third line, and inserting in place thereof the words: — embankments, and for procuring stone and gravel, and for obtaining land for stations, car houses, roundhouses, freight houses, yards, docks, wharves, elevators and other structures may purchase or take, in the manner provided in section seventy-eight, so much more land as may be reasonably necessary for the proper construction and security, and the convenient operation, of its railroad: *provided, however,* that the powers conferred upon the county commissioners by said section seventy-eight shall under this act be vested in the board of railroad commissioners, — so as to read as follows: — *Section 73.* [For § 73, as amended, see above.]

Filing of the location. R. S. 39, § 75. G. S. 63, § 18. 1874, 372, § 58. 1878, 135, § 2. 1881, 111, §§ 3, 4. P. S. 112, §§ 89, 136. R. L. 111, § 91. 2 Gray, 580. 124 Mass. 118. 127 Mass. 572. 141 Mass. 481. 143 Mass. 9. 146 Mass. 194.

SECTION 74. The corporation shall, within one year after the filing of the certificate of the clerk of the board of railroad commissioners with the secretary of the commonwealth as provided in section seventy-one, file with the commissioners of each county through which the railroad passes the location of the railroad as laid out, defining the courses, distances and boundaries of such portion of it as lies within each county, certified by the clerk of said board, and in such form and with such other particulars as may be required by the rules of said board; and until such location has been filed, the corporation shall not enter upon or use any land or other property, except for making surveys. The supreme judicial court shall have jurisdiction in equity of any violation of the provisions of this section by any entry upon or use of lands.

Location of purchased land. 1895, 356. R. L. 111, § 92.

SECTION 75. The corporation may, within one year after it has purchased or acquired land for railroad purposes, file with the commissioners of each county in which such land is situated

a location thereof, defining the courses, distances and boundaries of such land and certified by the clerk of the board of railroad commissioners in such form and with such other particulars as the rules of said board may require. [For rules of the Board for filing locations, see foot note, page 76.]

SECTION 76. A railroad corporation, having taken land for its railroad, may vary the direction of said railroad in the city or town in which such land is situated; but it shall not locate any part thereof outside the limits of the route fixed under the provisions of sections twenty and twenty-one, without the consent in writing of the board of aldermen or selectmen, if it was fixed under the provisions of section twenty, or of the board of railroad commissioners, if it was fixed under the provisions of section twenty-one. The corporation shall, before the expiration of the time required for completing the railroad, file with the county commissioners the location of the different parts where such variations have been made; but the time for completing the railroad shall not be extended in consequence of such variations.

Direction of road may be varied.
1833, 187, § 7.
R. S. 39, § 73.
G. S. 63, § 38.
1874, 372, § 59.
P. S. 112, § 90.
R. L. 111, § 93.
1 Gray, 340.
109 Mass. 528.

SECTION 77. A railroad corporation, with the approval in writing of the board of railroad commissioners, obtained upon petition, and after notice to all persons interested, and a hearing, may, for the purpose of improving the alignment of its railroad, change its location, subject to the provisions of this act relative to the fixing of the route of railroads, the laying out of the same and the taking of land and the payment of damages therefor.

Improvement of alignment.
1887, 430.
R. L. 111, § 94.
161 Mass. 369.

SECTION 78. If a railroad corporation, for the purpose of making or securing its railroad or for depot or station purposes, requires land or materials outside the limits of the route fixed, or requires additional land for one or more new tracks adjacent to other land occupied by such corporation by a track or tracks already in use, and is unable to obtain it by agreement with the owner, it may apply to the county commissioners, who, after notice to the owner, and a hearing, may prescribe the limits within which it may be taken without his permission in the manner hereinafter provided; and the corporation shall, within one year after the decree, file with the commissioners of each county in which the land is situated, a location thereof, certified by the clerk of the board of railroad commissioners, defining the courses, distances and boundaries thereof, in such form and with such other particulars as the rules of said board may require. If highways, buildings, parks or cemeteries are to be taken, the consent of the city or town in which the land is to be taken shall first be obtained; but nothing herein contained shall be construed as authorizing such taking, or altering the manner thereof, if said taking is otherwise prohibited or provided for by law.

Limits of land outside limits of route, how fixed.
1835, 148, § 3.
R. S. 39, § 55.
1853, 351, § 1.
G. S. 63, § 19.
1874, 355, § 1;
372, § 60.
1878, 135, § 2.
P. S. 112, § 91.
1884, 134.
R. L. 111, § 95.
119 Mass. 516.
141 Mass. 481.
161 Mass. 387.
213 Mass. 19.
See 1912, 725,
Part II, § 1,
below.

[See 1884, 134,
"public"
highways.]

Acts of 1912, Chapter 725, Part II, § 1.

SECTION 1. A railroad corporation is hereby authorized and empowered to purchase or take, in the manner provided in section seventy-eight of Part II of chapter four hundred and sixty-three of the acts of the year [See § 78, above.]

nineteen hundred and six, from time to time any lands or rights belonging to any other railroad or other public service corporation not necessary for the present business of such corporation or its business in the reasonably near future, provided that this act shall not authorize it to acquire by eminent domain any part of the location or right of way of any other railroad or street railway company except such lands or rights as the board of railroad commissioners shall adjudge necessary for the support, construction and repair of bridges or other methods of crossing such railroad or street railway.

Land outside limit taxable. 1853, 351, § 3. G. S. 63, § 20. 1874, 372, § 62.

SECTION 79. Land outside the limits of the route fixed as aforesaid, which is taken or purchased for railroad, depot or station purposes shall not be exempt from taxation.

P. S. 112, § 92. R. L. 111, § 96. 8 Cush. 237. 186 Mass. 128.
1895, 356. 4 Met. 564. 185 Mass. 114.

No prescriptive right in land of corporation. 1861, 100. 1874, 372, § 107.

SECTION 80. No length of possession or occupancy of land which belongs to a railroad corporation by an owner or occupier of adjoining land, shall create in him or in a person who claims under him a right to such land of the corporation.

P. S. 112, § 215. 146 Mass. 268. 197 Mass. 79. 212 Mass. 424.
R. L. 111, § 271. 161 Mass. 283. 211 Mass. 175.

Rules as to form, etc., of records, etc. 1878, 135, § 2. P. S. 112, § 93. R. L. 111, § 97.

SECTION 81. The board of railroad commissioners shall, from time to time, prescribe rules relative to the form in which all records of locations of railroads shall be made, the particulars to be contained therein and the manner in which such records shall be uniformly kept for preservation and convenient reference in the offices of the clerks of the several counties. No such record shall be filed until the clerk of said board certifies thereon that it has been prepared in conformity with the rules of said board.*

Taking Land and Damages therefor.

Prerequisites for taking land. 1881, 111, §§ 1, 4.

SECTION 82. No railroad corporation shall take, by purchase or otherwise, or enter upon or use, except for making surveys, any land or other property for the construction of its

* The rules prescribed by the Board of Railroad Commissioners, under sections 75, 78 and 81 of Part II., chapter 463 of the Acts of 1906, in regard to records of land purchased or acquired for railroad purposes, or of railroad locations, and the manner of keeping the same, are as follows:

RULE 1. Location maps shall be made upon a scale showing not more than four hundred feet to the inch, upon cloth-backed paper, and shall be firmly bound for record in books eighteen (18) inches from top to bottom, and thirty (30) inches from back to front.

RULE 2. Said maps shall show the courses of the tangents and the radii of the curves of the centre line of the railroad in question; the widths of land taken, specifying such width on each side of the centre line; also the courses of the division lines between the lots over which the location is made, and the distance between them on the centre line. When the land purchased or taken is entirely on one side of the centre line of location or outside the location, the description shall be so made as to tie the boundary lines of the lot to the centre line by lines, the courses and distances of which from a fixed point or points on said centre line shall be given. Where but one track is laid, the position of such track with reference to the centre line shall also be shown, in order that the boundaries of land may hereafter be determined by measurements from the track as laid, if the same shall not have been changed. Where two tracks are laid it shall be specified whether the centre line is the centre line of one of them or is midway between them.

Note. — The courses called for above may be either *magnetic* or *true*, but the maps and descriptions must specify which are given.

RULE 3. The description in writing must in all cases correspond with the map, and the two taken together must have the substantial certainty and precision of a deed. (2 Gray, 580.)

RULE 4. The location shall be certified by the directors of the corporation, or by the president, if authorized by a vote of said directors.

RULE 5. The location, when deposited with the clerk of the county commissioners, shall be kept for preservation and convenient reference in the office of said clerk, in a cabinet used exclusively for that purpose, and furnished with shelves sufficient to allow at least one separate shelf for the maps of each corporation owning a railroad within the county.

RULE 6. A book shall be kept in the office of each clerk, in which shall be recorded the name of every location, the time when it was filed, and the shelf where it is deposited.

RULE 7. No location after it has once been filed shall be taken from the office of the clerk for any purpose except upon the order of a court or other proper authority.

railroad or of any branch or extension thereof until the county commissioners of the county in which such land or other property is situated; after hearing the parties, have determined the manner in which the railroad shall cross the highways and other ways within such county, nor until it has obtained from the board of railroad commissioners the consent required by sections one hundred and seven and one hundred and eleven in all cases in which the county commissioners adjudge that public necessity requires the crossing at the same level; and notice of such hearing shall be given by publication for three successive weeks in one or more newspapers published in such county, the last publication to be at least seven days before the hearing. The supreme judicial court shall have jurisdiction in equity of violations of the provisions of this section.

[SECTION 83. If a railroad corporation is not able to obtain by agreement with the owner the land or materials necessary for its purposes as described in sections seventy-three, seventy-four, seventy-six and seventy-eight, it may take the same. It shall pay all damages caused by laying out, making and maintaining its railroad, or by taking land or materials therefor; and such damages, upon the application of either party, shall be estimated by the county commissioners in the manner provided with reference to the laying out of highways; and if it is intended to take land or materials, application may be made before the actual taking and appropriation thereof.]

P. S. 112,
§§ 94, 136.
R. L. 111, § 98.

Taking land,
and damages
therefor.
1833, 187, 1.
1834, 137, 1.
1835, 148, 3.
R. S. 39,
§§ 55, 56, 63,
76.
1849, 153.
1853, 351, 1.
1854, 448, 33.
G. S. 63,
§§ 19, 21, 36,
39.
1874, 372, 63.
P. S. 112, 95.
R. L. 111, 99.
23 Pick. 376.
3 Met. 380.

3 Cush. 107.	4 Gray, 301.	107 Mass. 352.	127 Mass. 571.	<i>Repealed.</i>
4 Cush. 291, 467.	14 Gray, 553.	109 Mass. 527.	141 Mass. 174.	<i>See 1912, 725,</i>
10 Cush. 385.	7 Allen, 313.	113 Mass. 52, 277.	144 Mass. 139.	<i>Part II, § 3,</i>
11 Cush. 506.	14 Allen, 57.	121 Mass. 124.	152 Mass. 506.	<i>below.</i>
12 Cush. 224, 605.	103 Mass. 1, 10.	124 Mass. 118.	178 Mass. 76.	<i>213 Mass. 19.</i>
2 Gray, 1.	105 Mass. 303.	125 Mass. 1.	182 Mass. 351.	

Section 83. If a railroad corporation is not able to obtain by agreement with the owner, the land necessary for the location of its railroad as described in sections seventy-three, seventy-four and seventy-six, it may take the same, and for that purpose shall file with the board of railroad commissioners the location of the railroad which it desires to lay out and construct, defining the courses, distances and boundaries, in such form and with such plans and particulars as may be required by the rules of said board. The filing of the said location with the said board shall operate as a taking of the lands, buildings, rights, easements and property included and described therein, except as hereinafter otherwise provided. Within ten days after the filing of the said location with the said board, the corporation shall submit to the board of aldermen of every city, and to the selectmen of every town through which the route of a proposed railroad passes, a copy, duly certified by the clerk of the board of railroad commissioners, of so much of the said location as applies to that part of the said railroad which lies within the limits of such city or town. The board of aldermen or the selectmen shall thereupon appoint a time and place for a hearing in the manner provided by section nineteen.

§ 83 as
amended by
1912, 725,
Part II, § 8.

If the board of aldermen of such city, or the selectmen of such

town, after notice and hearing as aforesaid, shall agree with the directors as to said location, or as to any location of the said railroad in that city or town, they shall in such agreement fix the route, and sign and give to the directors a certificate setting it forth, and shall make report of their action to the board of railroad commissioners within sixty days after the said copy has been submitted to them as hereinbefore provided. If they fail so to agree within sixty days after said corporation has submitted the location of the route to the board of aldermen or to the selectmen, the directors shall, within sixty days, petition the board of railroad commissioners to fix the route in that city or town, and the board, after notice to the board of aldermen or to the selectmen, shall forthwith hear the parties and, within ninety days, fix the route in that city or town, and shall make a certificate setting forth the route so fixed, which shall be certified by its clerk and the board of directors. The costs of the petition shall be paid by the corporation. The said board of railroad commissioners shall by order finally fix the location of the said railroad in accordance with the original location as varied in the said certificate, and within sixty days thereafter the corporation shall file with the county commissioners of each county through which the railroad passes a copy, duly certified by the clerk of the board of railroad commissioners, of so much of said location as lies within the limits of that county: provided, however, that the foregoing provisions relating to fixing the route by the boards of aldermen and by the selectmen or by the railroad commissioners shall not apply to an electric railroad company, the route of whose railroad has been previously fixed by the boards of aldermen and by the selectmen or by the railroad commissioners under chapter five hundred and sixteen of the acts of the year nineteen hundred and six and acts in amendment thereof and in addition thereto.

The said railroad company having taken land for its railroad as aforesaid may vary the direction of said railroad in any city or town in accordance with the provisions of section seventy-six; but the location of parts where such variations have been made shall be filed with the board of railroad commissioners, and a copy thereof with the county commissioners of each county within which any such variation is made. If the board of aldermen of any city or the selectmen of any town whose consent is required to such change of direction shall neglect or refuse to give such consent within sixty days after the railroad company has in writing requested the same, the directors may petition the board of railroad commissioners for leave to make such change of direction. The powers conferred upon county commissioners by section ninety-two shall, under this act, be vested in the board of railroad commissioners.

In so far as the said route, as finally fixed by the board of railroad commissioners, shall differ from the original location filed by the said corporation with the board, the original route shall be held to be abandoned, and the rights of all persons interested in so much of the said route as is included within the

abandoned part shall revive and be as if no location had been filed. And so far as the location as changed shall take lands, buildings, rights or other property not included in the original location, such lands, buildings, rights or other property shall be deemed to have been taken at the time when the order of the board of railroad commissioners finally fixing the location was passed. All persons who shall sustain any injury through the location as finally fixed shall have their damages assessed in the manner now provided by law, upon application duly made within three years after the date when said location was fixed, and any person who has suffered loss or been put to expense by having his lands, buildings, rights or other property included in the original location, but not included in the final location, shall be entitled to have his damages therefor assessed in like manner, but the value to him of the use of the land between the time of said location and the abandonment thereof shall be taken into consideration in determining the sum to which he is entitled. All acts and parts of acts inconsistent with the provisions of this section are hereby repealed.

Acts of 1912, Chapter 725, Part II, § 3.

SECTION 3. Part II of said chapter four hundred and sixty-three is hereby further amended by striking out section eighty-three and inserting in place thereof the following: — Section 83. [For § 83 as amended, see above.]

1906, 463,
Part II, § 83
amended.

SECTION 84. No application to the county commissioners to estimate damages for land or other property taken shall, except as is provided in sections ninety-eight to one hundred, inclusive, be sustained, unless it is made within three years after the filing of the location. R. L. 111, § 100. 7 Met. 78. 7 Gray, 389, 450.

Limitation of applications.
1833, 187, § 1.
R. S. 39, § 58.
G. S. 63, § 29.
1864, 293.
1868, 56.
1874, 372, § 64.
P. S. 112, § 96.

SECTION 85. Upon application to the county commissioners by either party for an estimate of damages, they shall, if requested by the owner, require the corporation to give security to their satisfaction for the payment of all damages and costs which may be awarded by them or by a jury for the land or other property taken; and if, upon petition of the owner and notice to the adverse party, any security taken appears to them to have become insufficient, they shall require the corporation to give further security to their satisfaction.

Securities for damages and costs.
1833, 187, § 3.
1835, 148, § 1.
R. S. 39, § 61.
1855, 9, § 1.
G. S. 63, § 32.
1874, 372, § 65.
P. S. 112, § 97.
R. L. 111,
§ 101.
127 Mass. 50.
153 Mass. 565.

SECTION 86. After the county commissioners have made their estimate, the corporation may tender to the owner of the land or other property the amount of damages estimated, in full satisfaction thereof, with costs. R. L. 111, § 102.

Tender to owner.
1833, 187, § 4.
R. S. 39, § 62.
G. S. 63, § 35.
1874, 372, § 66.
P. S. 112, § 98.

SECTION 87. Either party, if dissatisfied with the estimate of the county commissioners, may, at any time within one year after it has been completed and returned, apply for a jury to assess the damages. If no such application is made, the commissioners, after the expiration of said year, may issue a warrant of distress to compel the payment of the damages, with interest and costs.

Application for a jury.
1833, 187, § 1.
1834, 173.
R. S. 39,
§§ 57, 64.
1841, 125, § 3.
1847, 181, § 1.
G. S. 63,
§§ 22, 37.
1873, 261.
1874, 372, § 67.

P. S. 112, § 99.
R. L. 111, § 103.

21 Pick. 258.
1 Gray, 72.

119 Mass. 485.
125 Mass. 483.

128 Mass. 347.
139 Mass. 173.

Proceedings.
 1833, 187,
 §§ 1, 4,
 R. S. 39,
 §§ 56, 62,
 1836, 278, § 2,
 1841, 125, § 3.
 1849, 153,
 G. S. 63,
 §§ 21, 35,
 1874, 372, § 68.
 P. S. 112, § 100.
 R. L. 111,
 § 104.
 13 Met. 316.
 3 Cush. 25.
 8 Cush. 218.
 102 Mass. 116.
 135 Mass. 570.
 139 Mass. 213.
 Damages,
 when payable.
 1847, 259, § 3.
 1855, 9, § 2.
 G. S. 63, § 33.
 1874, 372, § 69.
 P. S. 112,
 § 101.

Plan of land
 to owner.
 Fencing.
 1833, 187, § 2.
 R. S. 39, § 60.
 1848, 327, § 2.
 G. S. 63, § 45.
 1874, 372, § 70.
 P. S. 112,
 § 102.
 R. L. 111,
 § 106.
 145 Mass. 450.
 146 Mass. 194.

Right to use
 of land sus-
 pended, when.
 1833, 187,
 §§ 2, 3,
 R. S. 39,
 §§ 60, 61.
 1854, 2,
 1855, 9, §§ 1-3.
 G. S. 63,
 §§ 32-34, 45.
 1874, 372,
 §§ 65, 67, 69,
 70, 72.
 P. S. 112,
 §§ 97, 99, 101,
 102, 104.
 R. L. 111,
 § 107.
 127 Mass. 50.

Change of
 location by
 county com-
 missioners,
 when.
 1872, 53, § 13;
 180, § 3.
 1874, 372, § 71.
 P. S. 112,
 § 103.
 R. L. 111,
 § 108.
 See 1912, 725,
 Part I, § 5.

SECTION 88. When either party applies for a jury to assess the damages, the proceedings shall be the same as are provided for the recovery of damages in the laying out of highways; but upon such application, the prevailing party shall recover costs. If the owner has refused the tender specified in section eighty-six, he shall pay all costs caused by the application and arising after the tender, unless, upon the final hearing, he recovers a greater amount of damages than the amount tendered. If the corporation applied for the jury, and upon the final hearing the damages estimated by the county commissioners are not reduced, it shall pay all costs caused by the application.

SECTION 89. If the corporation does not pay the amount of damages awarded by the jury within thirty days after such award, a warrant of distress or execution may issue to compel the payment thereof with costs and interest.

R. L. 111, § 105.

127 Mass. 50.

SECTION 90. After a railroad corporation has taken land or other property in the manner hereinbefore authorized, it shall, before constructing the railroad, furnish a plan of the land to the owner, and, upon request of the owner or occupant, shall fence it, and, upon demand made by the owner of such other property within three years after the taking thereof, shall, within thirty days, furnish him with a plan or description thereof in writing.

SECTION 91. All the right and authority of a railroad corporation to enter upon and use land or property taken by it, except for making surveys, shall be suspended until it gives the security required by section eighty-five; or, if for thirty days after a warrant has issued under the provisions of section eighty-seven, it neglects to pay the same, until payment thereof; or until it satisfies a warrant or execution issued under the provisions of section eighty-nine; or until it delivers a description or plan as prescribed by section ninety; and during the time in which its right to enter upon or use land or other property is so suspended, the supreme judicial court, upon petition of an owner of the land or other property, shall have jurisdiction in equity to prohibit and restrain the corporation from entering upon or using such land or property.

SECTION 92. An owner of land who is aggrieved by the location of a railroad crossing his land in such manner as to be of grievous damage, which could be avoided without serious injury to others, may, within thirty days after receiving the plan of his land, as provided in section ninety, petition the commissioners of the county in which the land lies, who shall give notice and hear the parties, either at their regular meeting or at a meeting called by their chairman for the purpose. If it appears that such location will greatly and unnecessarily damage the petitioner, and that it can so be changed as entirely or partly to avoid such damage without material detriment to the line of the railroad and without great injury to other parties, the commissioners shall change such location accordingly.

They shall give to each party a certificate of their determination within sixty days after receiving the petition. The compensation of the commissioners, not exceeding five dollars each a day and their necessary expenses, which shall be retained to their own use, and the costs of the petition, shall be paid by the corporation; but if the commissioners decide that the petition was frivolous, such compensation, expenses and costs shall be paid by the petitioner.

SECTION 93. If land which is owned by one person lies contiguously in different counties, an application for damages under the provisions of section eighty-three may be made by the owner of the land to the commissioners of any of such counties; and the commissioners of the county to whom application is first made shall have exclusive jurisdiction, with like powers and duties as are set forth in said section and in section one hundred and one; and either party may apply for a jury as provided in section eighty-seven, and such jury shall be from the same county as the commissioners, and shall estimate such damages as though the land lay entirely in one county.

SECTION 94. If land or other property of a person who is under guardianship, or if land which is held in trust, is taken for the use of a railroad, the guardian or trustee may release all damages, in like manner as if the land or other property were held in his own right.

SECTION 95. If a tenant for life or for years and the remainderman or reversioner claim damages for the laying out or alteration of a railroad, or if it appears that the real estate taken or affected is encumbered by a contingent remainder, executory devise or power of appointment, the damages shall be assessed and paid over and disposed of in the manner provided in sections seventeen, eighteen, nineteen and twenty-six of chapter forty-eight of the Revised Laws relative to damages assessed in like cases in laying out highways.

Revised Laws, Chapter 48, §§ 17, 18, 19, 26.

SECTION 17. If a tenant for life or for years and the remainderman or reversioner sustain damages in their property by the laying out, relocation, alteration or discontinuance of, or by specific repairs on, a highway, or if the property is encumbered by a contingent remainder, executory devise or power of appointment, entire damages, or an entire amount as indemnity, shall be assessed without apportionment thereof; and shall be paid to, or be recoverable by, any person whom the parties may appoint, and be held in trust by him for their benefit according to their respective interests. The trustee shall, from the income thereof, pay to the reversioner or remainderman the value of any annual rent or other payment which would, but for such damages, have been payable by the tenant, and the balance thereof to such tenant during the period for which his estate was limited, and upon its termination, he shall pay the principal to the reversioner or remainderman.

SECTION 18. The amount so to be placed in trust shall include only the damages assessed to the whole property when the value thereof is ascertained; and any damage special to a separate estate therein, and all

Jurisdiction of commissioners over land in contiguous counties.
1853, 5.
§§ 1, 2.
G. S. 63, § 23.
1874, 372, § 73.
P. S. 112, § 105.
R. L. 111, § 109.

Guardian or trustee may release damages.
R. S. 39, § 93.
G. S. 63, § 24.
1874, 372, § 74.
P. S. 112, § 106.
R. L. 111, § 110.

Assessment of damages for different interests.
1851, 290,
§§ 1, 2.
G. S. 63, § 25.
1874, 372, § 75.
1875, 117,
§§ 1, 4.
P. S. 112, § 107.
R. L. 111, § 111.

Damages of claimants having different interests.
R. S. 24, § 12.
1851, 290, § 1.
G. S. 43, § 17.
1875, 117, § 1.
P. S. 49,
§§ 18, 28.
1883, 253.
23 Pick. 433.
106 Mass. 547.
108 Mass. 535.
114 Mass. 483.
121 Mass. 453.
126 Mass. 384.
133 Mass. 207.
149 Mass. 176.
178 Mass. 76.
172, 185, 352.
192 Mass. 486.

Certain damages to be awarded separately.

1874, 388, § 3.
P. S. 49, § 27.
168 Mass. 366.
195 Mass. 64.

Trustee in certain cases to be appointed by probate court.
1851, 290, § 2.
G. S. 43, § 18.
1875, 117, § 2.
P. S. 49,
§§ 19, 29.
126 Mass. 384.
133 Mass. 207.
173 Mass. 76.
192 Mass. 486.

Tenant in possession may apply for a jury; or the trustees.
1875, 117,
§§ 3, 4.
P. S. 49, § 30.

Assessment of damages when lands are mortgaged.
1855, 247,
§§ 1, 4, 5.
G. S. 63, § 26.
1874, 372, § 76.
P. S. 112,
§ 108.
R. L. 111,
§ 112.
5 Gray, 470.
126 Mass. 4.
178 Mass. 76.

Apportionment of damages.
1855, 247,
§§ 1-3.
G. S. 63, § 27.
1874, 372, § 77.
P. S. 112,
§ 109.
R. L. 111,
§ 113.
5 Gray, 470.

Disposition of damages for land of married woman taken for railroad, etc.

interest or other earnings which accrue between the taking and the receipt by the trustee of the damages to the whole property, shall be awarded in the same proceedings separately.

SECTION 19. If a person having an interest in such property is, by reason of legal disability, incapable of choosing a trustee, or is unascertained or not in being, or if the parties cannot agree upon a choice, the probate court of the county in which the property is situated shall, upon application of the county commissioners or of any persons interested or of any other person, in behalf of such persons, whether in being or not, as may, by any possibility be or become interested in said property, appoint a trustee, who shall give to the judge of probate a bond with such sureties and in such sum as the judge may order, conditioned for the faithful performance of his duties.

SECTION 26. The tenant in possession of land which is encumbered by a contingent remainder, executory devise or power of appointment may, subject to the provisions of section twenty-eight, apply for a jury to revise the judgment of the commissioners in the assessment of damages; and if he fails so to apply within the first six months of such year, said trustees may within the remaining six months thereof apply for such jury.

SECTION 96. If the land is mortgaged, both the mortgagor and the mortgagee, in addition to their rights under the mortgage, shall have the same powers, rights and privileges, and be subject to the same liabilities and duties, as are provided in this act for land owners in cases of damages arising under the provisions of section eighty-three; and all petitions for the estimation of such damages shall state all mortgages which are known by the petitioner to exist upon the premises. Mortgagors and mortgagees may join in any such petition, and the tribunal to which it is presented shall order the petitioner to give notice thereof to all such mortgagors or mortgagees, by serving on each of them, fourteen days at least before the time of hearing, an attested copy thereof and of the order thereon, that they may become parties to the proceedings.

SECTION 97. If mortgagors or mortgagees begin or become parties to such proceedings, entire damages shall, upon final judgment, be assessed for the property taken, and such portion thereof as is equal to the amount then unpaid thereon shall be ordered to be paid to every mortgagee who is a party in the order of his mortgage, and the remainder to the mortgagor; and separate judgment shall be entered accordingly for each mortgagee, who shall hold his judgment in trust, first, with any proceeds realized thereon, to satisfy his mortgage debt, and, after such debt is in any way satisfied, to assign the judgment or pay over any remainder of proceeds to the mortgagor or other person entitled thereto.

Revised Laws, Chapter 153, § 13.

SECTION 13. If real property of a married woman is taken for a railroad, a way or any other public use, or is damaged by the laying out of a railroad, way or by any other public works, the damages or compensation awarded therefor may be so invested and disposed of as to secure to

her the same rights in the amount so awarded and the income thereof as she would have had in the real property and the income thereof if such real property had not been so taken or damaged. The probate court shall have concurrent jurisdiction in equity, upon the petition of such woman, to hear and determine it and to enforce and secure her rights.

1835, 146.
R. S. 77, § 17.
G. S. 108, § 14.
P. S. 147, § 14.
14 Pick. 108.

Revised Laws, Chapter 48, § 114.

SECTION 114. If mortgaged land is taken for public uses under authority of law, both mortgagors and mortgagees, in addition to their rights under the mortgage, shall have the same powers, rights and privileges and be subject to the same liabilities and duties as are provided in sections one hundred and twelve and one hundred and thirteen of chapter one hundred and eleven in the case of mortgaged lands so taken by railroad corporations.

Proceedings when mortgaged land is taken.
1881, 110.
P. S. 49, § 110.
140 Mass. 403.
187 Mass. 328.
190 Mass. 101.

SECTION 98. If the time for locating or constructing a railroad shall be extended by statute, all unsettled claims against the corporation for damages to land shall be revived, and the claimants for such damages may apply to the county commissioners, or for a jury, if the estimate of the commissioners has been completed and returned, within one year after the passage of such statute. The provisions of this section shall not include cases in which, by reason of a defect in the original location of a railroad already constructed, a new location is rendered necessary.

Extension of time for location to revive claims.
1862, 103.
1874, 372, § 78.
P. S. 112, § 110.
R. L. 111, § 114.

SECTION 99. If a suit is brought in which the right of the corporation to lay out and construct its railroad on a particular location is drawn in question, an application to the county commissioners for the estimation of damages caused by the taking of land or property within such location may be made within one year after the final determination of such suit upon the merits, if such suit is brought within one year after the time of such taking, or is brought for the purpose of trying the same right which was drawn in question in an earlier suit which was begun within one year after the time of taking and which failed for want of jurisdiction, defect of form or other like cause which was not decisive of the merits of the controversy, and is brought within six months after the termination of such former suit.

Application for damages within one year after decision as to validity of location.
1835, 148, § 7.
R. S. 39, § 59.
G. S. 63, § 30.
1874, 372, § 79.
P. S. 112, § 111.
R. L. 111, § 115.
7 Gray, 450.
137 Mass. 478.

SECTION 100. If a person applies for an estimate of his damages within the time limited by law, or applies for a jury to assess the damages, or is a party to such application by another person for a jury, and the petition or other proceeding is quashed, abated or otherwise avoided or defeated for any inaccuracy, irregularity or matter of form, or if, after verdict for such applicant or other party, the judgment is arrested or reversed on a writ of error, or the proceedings are quashed on certiorari, such applicant, petitioner or other party may begin such proceedings anew at any time within one year after such abatement, reversal or other determination.

New application if proceedings are quashed.
1847, 181, § 2.
G. S. 63, § 31.
1874, 372, § 80.
P. S. 112, § 112.
R. L. 111, § 116.
125 Mass. 484.

Revised Laws, Chapter 48, § 112.

Discontinu-
ance of pro-
ceedings to
recover land
damages
regulated.
1880, 141.
P. S. 49, § 108.
125 Mass. 483.

SECTION 112. No petition, suit, appeal or other proceeding in the supreme judicial court or in the superior court taken or instituted by any party aggrieved by the award of damages caused by laying out, making and maintaining a railroad or by taking land or materials therefor, or by the laying out, alteration or discontinuance of a highway, town way or private way, or by taking land or materials therefor, shall be discontinued except by leave of court or by agreement of all the parties thereto; and any party thereto may prosecute the same as if it had been begun by him.

Embankments, Fences, etc.

Construction,
etc., of em-
bankments
may be
ordered.
1841, 125,
§§ 1, 3.
G. S. 63, § 40.
1874, 372, § 81.
P. S. 112,
§ 113.
R. L. 111,
§ 118.
154 Mass. 314.

SECTION 101. At the time of estimating damages to land owners under the provisions of section eighty-three, the county commissioners shall in addition thereto order the corporation to construct and maintain such embankments, culverts, walls, fences or other structures as they judge reasonable for the security and benefit of such owners, and shall prescribe the time and manner of making or repairing them, and it shall not be competent for a jury to reverse such order.

Enforcement
of order.
1841, 125, § 2.
G. S. 63, § 41.
1874, 372, § 82.
P. S. 112,
§ 114.
R. L. 111,
§ 119.
6 Cush. 420.
1 Gray, 614.

SECTION 102. If the corporation neglects to comply with such order, the supreme judicial court, upon application of the land owner who is interested in its execution, or his assigns, shall have jurisdiction in equity to enforce the specific performance thereof. Or if the corporation, for more than forty-eight hours after notice of such neglect, given in writing to the president or superintendent, fails to begin the work required to be done, or thereafter unreasonably delays to complete it, the person so interested may, in an action of tort against the corporation, recover double the damages sustained by him by reason of the neglect.

Fences.
1846, 271,
§§ 3, 4.
1855, 350, § 5.
G. S. 63,
§§ 43, 44.
1874, 372, § 84.
1879, 205, § 1.
P. S. 112,
§ 115.
1882, 162.
R. L. 111,
§ 120.
10 Cush. 12.
12 Cush. 605.
1 Allen, 16.
98 Mass. 560.
102 Mass. 383.
105 Mass. 193.
107 Mass. 411.
108 Mass. 189.
115 Mass. 458,
564.
121 Mass. 118.
132 Mass. 24.
140 Mass. 240.
157 Mass. 297.
181 Mass. 322.
207 Mass. 14,
17.

SECTION 103. Every railroad corporation shall erect and maintain suitable fences, with convenient bars, gates or openings therein, upon both sides of the entire length of its railroad, except at the crossings of a public way or in places where the convenient use of the railroad would be thereby obstructed, and except at places where, and so long as, it is specially exempted from the duty of so doing by the board of railroad commissioners. Such an exemption granted prior to the first day of August in the year eighteen hundred and eighty-two shall not be revoked except upon new proceedings had under the provisions of this section, notice of which shall be given to the corporation, and published once in each of three successive weeks in a newspaper published in each county in which the land is situated. The corporation shall also construct and maintain sufficient barriers, where it is necessary and practicable so to do, to prevent the entrance of cattle upon the railroad. A corporation which unreasonably neglects to comply with the provisions of this and the following section shall, for every such neglect, forfeit not more than two hundred dollars for every month during which the neglect continues; and the supreme

judicial court shall have jurisdiction in equity to compel the corporation to comply with such provisions, and, upon such neglect, to restrain and prohibit it from crossing a highway or town way, or from using any land, until such provisions shall have been complied with.

SECTION 104. If a person other than the railroad corporation is required by law or contract to erect or maintain fences along a part of the line of the railroad, the corporation shall erect such fences or keep them in repair as provided in the preceding section, and may recover the reasonable cost thereof in an action of contract from such person. If he is an owner of land adjoining such line, the corporation shall also have a lien upon said land for labor performed and furnished and all materials furnished and used by it in erecting and repairing such fences upon such land, and for the costs which may arise in enforcing it; and it shall be enforced in the manner provided for enforcing liens in chapter one hundred and ninety-seven of the Revised Laws.

Cost of fencing, how recovered from person liable. 1879, 205, § 2.
P. S. 112, § 116.
R. L. 111, § 121.
132 Mass. 24.

Revised Laws, Chapter 128, § 77.

SECTION 77. A lien of any description upon registered land shall be enforced in the same manner as like liens upon unregistered land. If registered land is set off or sold on execution, or taken or sold for taxes or for any assessment, or sold to enforce a lien for labor or materials, or the lien of a mortgagee or co-tenant arising from a payment of taxes; or for an assessment under the provisions of sections twenty-three to twenty-five of chapter fifty, or for costs and charges for taking down dangerous structures under the provisions of section seven of chapter one hundred and four, or for erecting fences along the line of a railroad corporation under the provisions of section one hundred and twenty-one of chapter one hundred and eleven or for improving meadows and swamps under the provisions of sections four to seven, inclusive, of chapter one hundred and ninety-five, or for flowing land under the provisions of section fourteen of chapter one hundred and ninety-six, or for any costs and charges incident to such liens, any execution, or copy of the execution, any officer's return, or any deed, demand, certificate or affidavit or other instrument made in the course of proceedings to enforce such liens and required by law to be recorded in the registry of deeds in the case of unregistered land, shall be filed with the assistant recorder for the district in which the land lies and registered in the registration book, and a memorandum made upon the proper certificate of title in each case as an adverse claim or encumbrance.

Liens on registered land, how enforced. 1898, 562, § 78.

Crossings.

SECTION 105. If two or more railroad corporations whose tracks cross each other at the same level agree to separate the grades, they may apply to the board of railroad commissioners, which shall thereupon determine when, in what manner and by which corporation said work and each portion thereof shall be done, and shall apportion all charges and expenses caused by making such alterations and all future charges for keeping the necessary structures connected therewith in repair among said corporations. For said purposes, the corporations may, under the direction of said board, make all necessary changes in the

Separation of grade crossings by agreement. 1881, 120.
P. S. 112, § 117.
R. L. 111, § 122.
See 1913, 546, § 5.

location, grade and construction of said railroads, and, so far as may be necessary, may take additional land therefor, and may raise, lower or otherwise change any and all highways and town ways; and in the exercise of said powers said corporations, and any person who sustains damage thereby, shall have all the rights, privileges and remedies, and be subject to all the duties, liabilities and restrictions provided by law in the case of land taken by railroad corporations. The supreme judicial court shall have jurisdiction in equity to enforce compliance with all such orders of said board.

Crossings of one railroad with another, or over navigable waters. 1872, 53, § 12; 180, § 3. 1873, 121, § 4. 1874, 122; 372, § 85. 1881, 156. P. S. 112, § 118. R. L. 111, § 123. 125 Mass. 253.

Commonwealth's flats.

Railroad crossing a highway not to obstruct the same. R. S. 39, § 66. 1846, 271, § 1. G. S. 63, §§ 46, 47. 1874, 372, § 86. 1876, 73. P. S. 112, § 119. R. L. 111, § 124. 14 Gray, 379.

Space under bridge regulated.

SECTION 106. A railroad shall not be constructed across another railroad at the same level without the consent in writing of the board of railroad commissioners, nor across navigable or tide waters without the consent in writing of the board of harbor and land commissioners, and in such manner as said boards, respectively, shall prescribe, nor across any portion of the deep channel of Boston harbor below the bridges existing on the thirtieth day of March in the year eighteen hundred and eighty-one, without special legislative authority. Any littoral proprietor whose access to the sea is obstructed or interrupted by the location and construction, after said day, of any railroad across tide water, otherwise than by a bridge with a suitable draw, may recover of the corporation whose railroad is so located all damages caused by such location and construction, in the same manner and with the same rights as to security as are provided by law in relation to damages caused by laying out and maintaining railroads; but this provision as to damages shall not apply to any railroad constructed under the provisions of chapter two hundred and fifty-two of the acts of the year eighteen hundred and eighty. Associates for the purpose of constructing a railroad under the provisions of section thirteen, or a corporation which proceeds to construct its railroad or branch or extension thereof, shall not take proceedings which involve a new crossing of one railroad by another at the same level, unless such crossing is first approved in writing by the board of railroad commissioners; and every preliminary approval of a plan for such crossing shall be subject to revision by said board. The supreme judicial court shall have jurisdiction in equity, upon information filed by the attorney-general, of violations of the provisions of this section.

SECTION 107. A railroad which is laid out across a public way shall be so constructed as not to obstruct the same; and, unless the county commissioners and the board of railroad commissioners authorize a crossing at the same level as provided in section one hundred and eleven, it shall be constructed so as to pass either over or under the way, as prescribed in the following section, and conformably to any decree which may be made by the county commissioners under the provisions of section one hundred and nine. 14 Allen, 444. 202 Mass. 397.

SECTION 108. If the railroad is constructed to pass over the way, a sufficient space shall be left under the railroad conven-

iently to accommodate the travel on the way. If the railroad is constructed to pass under the way, the railroad corporation shall build such bridges, with their abutments and suitable approaches thereto, as will accommodate the travel upon the way; but no bridge for any purpose shall be constructed over a railroad at a height less than eighteen feet above the track of such railroad, except by the consent in writing of the board of railroad commissioners. The supreme judicial court shall have jurisdiction in equity to enforce compliance with the provisions of this section.

1846, 271, § 1.
G. S. 63, § 47.
1874, 372, § 87.
1875, 219.
P. S. 112,
§ 120.
R. L. 111,
§ 125.
130 Mass. 361.
176 Mass. 145.

SECTION 109. A railroad corporation may raise or lower a public way for the purpose of having its railroad pass over or under the same; but before proceeding to cross or to alter or excavate for the purpose of crossing the way, it shall obtain from the county commissioners a decree prescribing what alterations may be made in the way, and what structures erected at the crossing; and the manner and time of making or erecting the same; and before entering upon, excavating or altering the way, it shall give to the city or town in which the crossing is situated security, satisfactory to the commissioners, that it will faithfully comply with the requirements of the decree to their acceptance, and will indemnify the city or town against all damages and charges by reason of a failure so to do.

Highway may be raised or lowered under direction of county commissioners.
1833, 187, § 5.
R. S. 39, § 67.
1855, 350, § 1.
G. S. 63, § 48.
1874, 372, § 88.
P. S. 112,
§ 121.
R. L. 111,
§ 126.
23 Pick. 326.
9 Cush. 1.
1 Allen, 329.
14 Allen, 444.
113 Mass. 52.
134 Mass. 549.

SECTION 110. A railroad corporation may alter the course of a public way for the purpose of facilitating the crossing thereof by its railroad or of permitting its railroad to pass at the side thereof without crossing, if, after notice to the city or town in which the way is situated, and a hearing, the county commissioners decide that such alteration will not essentially injure the way, and make a decree prescribing the time and manner of such alteration. The corporation shall pay all damages caused to private property by the alteration, as in case of land taken for its railroad.

Course of highway may be altered.
1833, 187, § 6.
R. S. 39, § 70.
1849, 159.
G. S. 63, § 55.
1874, 372, § 89.
P. S. 112,
§ 122.
R. L. 111,
§ 127.
14 Allen, 444.

SECTION 111. If a railroad is laid out across a public way, the county commissioners, upon the application of the railroad corporation, or of the board of aldermen of the city or selectmen of the town in which the crossing is situated, after notice to all persons interested and a hearing, may adjudge that public necessity requires the crossing at the same level, and may, if the board of railroad commissioners also consents in writing to such crossing at the same level, make a decree specially to authorize and require the corporation so to construct its railroad, in such manner as shall be prescribed in the decree, and said commissioners may modify the terms of such decree or may revoke it at any time before the construction of the railroad at such crossing.

Crossing highway or town way at a level.
1864, 152,
§§ 2, 5, 6.
1865, 239, § 1.
1874, 372, § 90.
1876, 73.
P. S. 112,
§ 123.
R. L. 111,
§ 128.
178 Mass. 195.

SECTION 112. A railroad corporation whose railroad is crossed by a public way at the same level shall, at its own expense, so guard or protect its rails by plank, timber or otherwise as to secure a safe and easy passage across its railroad; and if, in the opinion of the county commissioners, any subse-

Rails to be protected at highway crossing.
1857, 287, § 6.
G. S. 63, § 60.
1874, 372, § 91.
P. S. 112,
§ 124.

R. L. 111,
§ 129.
140 Mass. 84.
147 Mass. 505.
164 Mass. 393.
178 Mass. 195.
211 Mass. 574.

When high-ways may be laid out across a railroad.
R. S. 39, § 69.
1857, 287,
§§ 1-5.
G. S. 63,
§§ 57-59.
1874, 372, § 92.
1876, 73.
P. S. 112,
§ 125.
R. L. 111,
§ 130.
11 Gray, 512.
1 Allen, 324.
7 Allen, 523.
140 Mass. 87.
147 Mass. 455.
159 Mass. 283.
173 Mass. 12.
178 Mass. 195.
185 Mass. 186.
188 Mass. 234.

quent alteration of the highway or other way or additional safeguards are required at the crossing, they may make a decree ordering the corporation to establish the same as provided in section one hundred and nine.

SECTION 113. A public way may be laid out across a railroad previously constructed, if the county commissioners adjudge that the public necessity and convenience so require; and in such case, after notice to the railroad corporation and a hearing of all parties interested, they may thus lay out or may authorize a city or town, upon petition of the board of aldermen or selectmen thereof, to lay out a way across a railroad, in such manner as not to injure or obstruct the railroad, and otherwise in conformity with the provisions of sections one hundred and seven and one hundred and eight; but they shall not permit it to cross at a level with the railroad unless public necessity so requires, and the board of railroad commissioners consents thereto in writing, in which case the county commissioners may give special authority for such crossing as provided in section one hundred and eleven.

Acts of 1905, Chapter 456.

An Act to authorize the Metropolitan Park Commission to lay out, extend and construct Roadways and Parkways across Railroads, and to make Certain Agreements with Railroad Companies.

The metropolitan park commission may construct roadways, etc., across railroads, etc.

SECTION 1. The metropolitan park commission is hereby authorized to make and enter into such agreements with any railroad corporation as may be necessary to secure or facilitate the laying out, extension, construction and maintenance of a roadway or parkway under the care, custody or control of said commission across railroad lands or locations, and to indemnify such railroad corporation against any claims for damages to persons or property, arising out of such laying out, extension, construction and maintenance.

To give notice to railroad corporations, etc.

SECTION 2. Said commission shall give the railroad corporation thirty days' notice in writing of the proposed work, accompanied by a plan thereof; and in case said commission is unable to agree with the railroad corporation across whose land or location it desires to lay out, extend and construct a roadway or parkway, it may have the question of its right to cross and the manner of crossing determined by the board of railroad commissioners: *provided, however*, that no crossing of such roadway or parkway shall be at a level with the railroad tracks and that no such roadway or parkway shall be laid out, extended and constructed across a railroad in such manner as to injure or obstruct the railroad.

Proviso.

Railroad commission may make a decree, etc.

SECTION 3. Said board, upon petition of the commission, and after due notice to the railroad company, shall hear the parties; and the board, if of opinion that said petition should be granted, shall make a decree describing the place, time and manner of constructing such crossing, and how much, if any, of the work made necessary by such crossing shall be done by the railroad company; and thereafter said commission may lay out, construct and maintain such roadway or parkway across the railroad in accordance with the terms of said decree.

Payment of expenses.

SECTION 4. All expenses of and incident to constructing and maintaining any roadway or parkway crossing a railroad as herein provided shall be borne by the Commonwealth and shall be paid out of the funds

available for use by said commission, unless otherwise determined by an agreement between said commission and any such railroad corporation.

SECTION 5. The damages sustained by any railroad corporation by reason of the laying out, extension, construction and maintenance of a roadway or parkway under this act may be assessed by a jury of the superior court in the same manner as is provided by law with respect to damages sustained by reason of the laying out of ways: *provided, however*, that no suit for such damages shall be brought after the expiration of three years from the day when the railroad is entered upon for the purpose of constructing any roadway or parkway as authorized herein.

SECTION 6. This act shall take effect upon its passage. [*Approved May 25, 1905.*]

Acts of 1908, Chapter 552.

An Act relative to the Repair and Maintenance of Certain Bridges.

SECTION 1. If the county commissioners of a county, the board of aldermen of a city or the selectmen of a town in which a bridge at the crossing of a public way and a railroad, or a bridge upon which a street railway company is authorized to lay and use tracks, is located in whole or in part, or the directors of a corporation owning or operating such railroad, or the directors of a company owning or operating such street railway, are of the opinion that such bridge is in need of maintenance or repair, they may apply to the board of railroad commissioners who shall, after public notice, hear all persons interested, and, if they decide that the work of maintenance or repair is necessary, shall prescribe the manner in and the limits within which it shall be done, and shall forthwith certify their decision to the parties.

SECTION 2. If railroad corporations, street railway companies, counties, cities, towns, or any of them, jointly or severally, are charged with the duty of maintaining or repairing any such bridge under any provision of law, agreement, or decree of court, and if the party or parties so charged with such duty refuse or neglect to carry into effect such decision within a reasonable time, any other such party may apply to the superior court, which shall have jurisdiction in equity to enforce the carrying into effect of such decision by the party or parties so charged with such duty.

SECTION 3. This act shall take effect upon its passage. [*Approved May 27, 1908.*]

SECTION 114. A railroad corporation may, with the consent of a canal corporation, alter the course of a canal or of a feeder to a canal, which interferes with the convenient location of its railroad. Damages caused by taking property therefor shall be estimated and paid as in case of land taken under the provisions of section eighty-three.

SECTION 115. If, upon application to the county commissioners by the board of aldermen of a city or selectmen of a town, and after notice to the corporation which owns or operates a railroad, and a hearing, it appears that the railroad so crosses a public way as to obstruct it, contrary to the provisions of section one hundred and seven, or of a decree made under the provisions of section one hundred and nine, or that the corporation refuses or neglects to keep a bridge or other structure which is required or necessary at such crossing in proper repair, the county commissioners may make a decree

Damages.

Proviso.

Maintenance of certain bridges.

Maintenance and repair of bridges.

Alterations of canals.
1837, 226,
§§ 1, 4.
G. S. 63, § 56.
1874, 372, § 93.
P. S. 112,
§ 126.
R. L. 111,
§ 131.

Obstructions and repairs at crossings.
1855, 350, § 2.
G. S. 63, § 49.
1874, 372, § 94.
P. S. 112,
§ 127.
R. L. 111,
§ 132.
198 Mass. 586.

prescribing what repairs shall be made by the corporation at the crossing, and the time within which they shall be made, and shall make a decree ordering the corporation to pay the costs of the application. They may further order the corporation to give security, as provided in section one hundred and nine, for the faithful performance of the requirements of the decree and for the indemnity of said city or town upon a failure in such performance.

Repairs of bridges, etc.
 R. S. 39, § 72.
 1846, 271, § 1.
 1851, 88.
 1855, 350, § 4.
 G. S. 63, §§ 61, 67, 69.
 1872, 262, § 6.
 1874, 372, § 95.
 P. S. 112, § 128.
 R. L. 111, § 133.
 7 Cush. 490.
 12 Allen, 254.
 97 Mass. 430.
 131 Mass. 516.
 138 Mass. 454.
 139 Mass. 528.
 159 Mass. 289.
 188 Mass. 234.
 Amended by 1907, 315.

SECTION 116. Every railroad corporation shall, except as provided in sections twenty-nine to forty-five, inclusive, of Part I, at its own expense, construct, maintain and keep in repair all bridges, with their approaches and abutments, which it is authorized or required to construct over or under a canal or public way; and a city or town may recover of the railroad corporation whose railroad crosses a public way therein all damages, charges and expenses incurred by such city or town by reason of the neglect or refusal of the corporation to erect or keep in repair all structures required or necessary at such crossing; but if, after the laying out and building of a railroad, the county commissioners authorize a public way to be laid out across the railroad, all expenses of and incident to constructing and maintaining the way at such crossing shall be borne by the county, city, town or other owner of the same, unless otherwise determined by an award of a special commission, under proceedings in accordance with the provisions of [the five following sections.] *sections twenty-three to twenty-eight, inclusive, of Part I.*

Acts of 1907, Chapter 315.

An Act relative to constructing Ways across the Locations of Railroad Corporations.

1906, 463,
 Part II, § 116,
 amended.

SECTION 1. Section one hundred and sixteen of Part II of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby amended by striking out the words "the five following sections", at the end thereof, and inserting in place thereof the words: — sections twenty-three to twenty-eight, inclusive, of Part I, — so as to read as follows: — *Section 116.* [For § 116 as amended, see above.]

County commissioners to have jurisdiction of obstructions.
 1849, 222, § 4.
 G. S. 63, § 62.

SECTION 117. County commissioners shall have original jurisdiction of questions relative to obstructions to highways or town ways which are caused by the construction or operation of railroads. 1874, 372, § 102. P. S. 112, § 135. R. L. 111, § 140.

4 Cush. 63. 2 Gray, 54. 14 Gray, 93. 141 Mass. 17. 155 Mass. 16.

— orders of, how enforced.
 1849, 222, § 5.
 1855, 350, § 3.
 G. S. 63, §§ 50, 63.
 1874, 372, § 103.
 1881, 111, § 4.
 P. S. 112, § 136.
 R. L. 111, § 141.
 7 Cush. 506.
 174 Mass. 379.

SECTION 118. The supreme judicial court shall have jurisdiction in equity to compel a railroad corporation to raise or lower a public way which the county commissioners have decided is necessary for the security of the public to be raised or lowered, and to compel it to comply with the orders of county commissioners relative to obstructions of such ways by it; and if, upon the petition of the board of aldermen of a city or selectmen of a town, it appears that such corporation has ex-

cavated or altered a public way without obtaining the decree and giving the security required by section one hundred and nine, or has neglected for fifteen days to give security as required by section one hundred and fifteen, said court may enjoin it from entering upon, altering, excavating or crossing the way until such decree has been obtained or such security given.

SECTION 119. An application for damages which have been sustained by the owner of a private way, by reason of a railroad crossing the same, shall be made within three years after the time when the way was so obstructed.

P. S. 112, § 137.

R. L. 111, § 142.

1874, 362; 372, § 104.
103 Mass. 1.

Crossing a private way.
1833, 187, § 5.
R. S. 39, § 71.
G. S. 63, § 28.

SECTION 120. If a railroad which has been lawfully laid out through land without the consent of the owner thereof separates a portion of such land from another or from a public way, and the owner, having a right to cross the railroad, cannot agree with the corporation as to the place or manner in which he shall cross, or if a crossing is inconvenient, either party, in a case which does not involve the abolition of a crossing at grade, may apply to the county commissioners, who, after taking a recognizance from the applicant to the county, with sureties to their satisfaction, for the payment of costs and expenses according to their order, and after notice to the other party and a hearing, may make an order relative to such crossing and to the costs of the application; but they shall not order the corporation to construct or maintain a crossing without its consent, unless it is liable by law or by agreement to construct a crossing for the owner of the land, or is the applicant.

Severance of private land by crossing.
1857, 213,
§§ 1-4.
G. S. 63,
§§ 64-66.
1874, 372,
§ 105.
P. S. 112,
§ 138.
1897, 264.
R. L. 111,
§ 143.
14 Allen, 444.
103 Mass. 1.

SECTION 121. If by the laying out of a railroad, or the widening thereof, a person is cut off from access to land owned by him, and has neither received compensation nor made an agreement with the corporation relative thereto, the board of railroad commissioners, after notice to the parties and a hearing, may make a decree ordering a crossing to be made and maintained at the expense of the railroad corporation, specifying definitely the character thereof and when it may be used. If the railroad corporation neglects for ninety days after the date of such order to comply therewith, it shall forfeit five dollars for every day thereafter during which such neglect continues, which shall be recovered by the person aggrieved. The amount recovered shall be equally divided between the plaintiff and the county within which the crossing was ordered to be maintained.

Access to land cut off by railroad.
1892, 171.
R. L. 111,
§ 144.
162 Mass. 81.
165 Mass. 514.

SECTION 122. A party who is aggrieved by a decision or order of the county commissioners in any matter or proceeding arising under the provisions of section twenty-three of Part I, or of section one hundred and twenty of Part II, or by their unreasonable refusal or neglect to announce a decision in any such matter or proceeding for sixty days after the first day fixed for a hearing thereon, may appeal to the board of railroad commissioners by filing a notice of appeal with the county commissioners within ten days after the decision or order ap-

Appeal from county commissioners.
1882, 135,
§§ 1-3.
R. L. 111,
§ 145.
141 Mass. 208.

pealed from, or in case of a refusal or neglect to announce a decision, within ten days after the expiration of sixty days from the first day fixed for a hearing thereon. The proceedings before the county commissioners in which the appeal is taken shall thereupon be stayed.

SECTION 123. The appellant, to perfect the appeal, shall, within twenty days after filing the notice thereof, file with the clerk of the board of railroad commissioners a petition stating the reasons for the appeal, and shall, within ten days after filing the petition, cause a certified copy thereof to be served upon the county commissioners. An appeal may be waived at any time before a hearing thereon by agreement of the parties in writing, filed with the county commissioners and said board. If the appellant fails to perfect the appeal, or if the appeal is waived, the matter may proceed before the county commissioners as if no appeal had been taken.

SECTION 124. The board of railroad commissioners shall hear the appeal authorized by section one hundred and twenty-two in the county in which it is taken, unless the parties in writing otherwise agree. Upon such appeal, said board shall have the same powers and perform the same duties as county commissioners in like matters and proceedings, and shall be governed by the provisions of law relative to hearings and determinations by, and decisions and orders of, the county commissioners in such matters and proceedings.

SECTION 125. No right of way across any railroad track or location which is in use for railroad purposes shall be acquired by prescription. The provisions of this section shall not apply to rights of way which existed on the fifth day of June in the year eighteen hundred and ninety-two.

144 Mass. 336.

145 Mass. 433.

176 Mass. 359.

213 Mass. 92.

Appeal from proceedings thereon.
1882, 135,
§§ 4, 5.
R. L. 111,
§ 146.

Hearing of appeals; powers of board.
1882, 135,
§§ 6, 7.
R. L. 111,
§ 147.

Right of crossing not acquired by prescription.
1892, 275.
R. L. 111,
§ 148.
135 Mass. 107.
141 Mass. 407.
142 Mass. 21.

BRANCHES AND EXTENSIONS.

SECTION 126. A railroad corporation, after having finished the construction of its railroad and put it in operation, may build a branch or extension thereof in accordance with the provisions of this chapter, if an amount of additional capital stock, applicable solely to the construction of such branch or extension, has been subscribed, and a certificate of the board of railroad commissioners that public necessity and convenience require the construction of the branch or extension has been obtained, and a certificate of the clerk of said board has been filed according to the provisions of section seventy-one, and it may build such branch or extension without additional capital stock, if its indebtedness is not thereby increased; but the provisions of this section shall not invalidate a lease or contract between railroad corporations which is made pursuant to law. Upon the filing of such certificate, fifty dollars shall be paid to the secretary of the commonwealth. If the construction of such branch or extension is not begun, and ten per cent of the addi-

Branches and extensions.
1874, 351, §§ 1,
3, 5; 372,
§§ 31, 32.
1875, 110.
1878, 215, § 4.
P. S. 112,
§§ 139, 140.
1882, 265,
§§ 1, 3.
R. L. 111,
§ 161.
124 Mass. 368.

tional capital stock is not expended thereon within two years after the date of the certificate required by section seventy-one and the branch or extension completed and put in operation within four years after said date, the power of the railroad corporation to construct the same shall cease.

OPENING THE RAILROAD FOR USE.

SECTION 127. A railroad or branch or extension thereof shall not be opened for public use until the board of railroad commissioners, after an examination, certifies that all laws relative to its construction have been complied with, and that it appears to be in a safe condition for operation.

Road not to be opened for public use until, etc. 1874, 223; 372, § 120. P. S. 112, § 141. R. L. 111, § 162.

SECTION 128. When a railroad or a branch or extension thereof is finished and opened for public use, the corporation by which it was constructed shall, within one year thereafter, file in the office of the secretary of the commonwealth a map and profile thereof, with tables of grade and curvature and a statement of the other characteristics of the railroad, certified by its president and engineer in such form as the board of railroad commissioners may prescribe.

When road is opened for public use, map, etc., to be filed, etc. 1872, 53, § 14; 180, § 3. 1874, 372, § 34. P. S. 112, § 142. R. L. 111, § 163.

EQUIPMENT AND OPERATION.

Drawbridges.

SECTION 129. Every railroad corporation shall provide for each drawbridge upon the line of its railroad an experienced draw-tender, who shall have full control of the passing of vessels through the draw; and the corporation shall make and enforce regulations for each drawbridge conformable to the following seven sections.

Draw-tender. 1855, 434, §§ 1, 2. G. S. 63, § 73. 1863, 131, § 1. 1874, 372, § 108. P. S. 112, § 148. R. L. 111, § 170.

SECTION 130. Every such drawbridge shall be kept closed at all times, except while open for the actual passage of vessels. The draw-tender shall at all hours of the day and night be ready to open the draw; shall decide, having regard to the convenient and secure passage of engines and trains and the state of the tide, when and in what order vessels may pass, allowing no unnecessary detention; and shall give all the necessary advice and furnish proper facilities for such passing.

Drawbridges to be kept closed, except. 1855, 434, §§ 2, 3. G. S. 63, § 74. 1863, 131, § 2. 1874, 372, § 109. P. S. 112, § 149. R. L. 111, § 171.

SECTION 131. The master of a vessel who applies to pass such draw shall give to the draw-tender a true report of his vessel's draught of water, and of anything projecting below such vessel's draught, and shall be governed by him as to priority of right if two or more vessels apply at the same time to pass. In passing, he shall, unless otherwise directed by the draw-tender, go to the right according to the tide, if practicable, and shall so place his buoys, warping-lines, anchors, cables and other rigging and equipment as neither to interfere with other vessels nor obstruct or injure the bridge; and he shall be allowed a reasonable time for his vessel to pass. A railroad train shall be

Passage of vessels, how regulated. 1855, 434, §§ 3, 4. G. S. 63, §§ 75, 76. 1874, 372, § 110. P. S. 112, § 150. R. L. 111, § 172. 127 Mass. 7. 146 Mass. 621.

allowed fifteen minutes to cross a draw before and after it is due by its time table, and any approaching train shall be allowed a further reasonable time to pass.

Drawbridge signals.
1863, 131, § 3.
1874, 372,
§ 111.
P. S. 112, § 151.
R. L. 111, § 173.

Drawbridge gates.
1863, 131, § 4.
1874, 372,
§ 112.
P. S. 112,
§ 152.
R. L. 111,
§ 174.

Engineer to see that draw-bridge is closed.
1863, 131, § 5.
1874, 372,
§ 113.
P. S. 112,
§ 153.
R. L. 111,
§ 175.

Penalty on corporations for neglect, etc.
1863, 131, § 6.
1874, 372,
§ 114.
P. S. 112,
§ 154.
R. L. 111,
§ 176.

— for obstructing draw-tender, etc.
1855, 434,
§§ 5-7.
G. S. 63,
§§ 78-80.
1874, 372,
§ 115.
P. S. 112,
§ 155.
R. L. 111,
§ 177.
127 Mass. 7.

SECTION 132. Every drawbridge shall be furnished with conspicuous day and night signals, which shall be displayed at all times in such manner as clearly to indicate to the engineer of an approaching train whether the draw is open or closed.

SECTION 133. The railroad corporation may erect, at a distance of five hundred feet from every drawbridge, or at such other distances as may on its application be prescribed by the board of railroad commissioners, and on each side thereof, a substantial barrier, so constructed and connected with the draw by suitable mechanism, that the draw, when in position for the passage of trains, cannot be opened or moved until the barriers have been closed across the track in such manner as to be a warning to any train which approaches in either direction.

SECTION 134. If a drawbridge is not furnished with such barriers, and in all cases if by reason of darkness or otherwise the barriers or signals connected with a drawbridge are not visible from the engine of an approaching passenger train, the engineer of such train shall bring it to a full stop at a distance of not less than three hundred nor more than eight hundred feet from the drawbridge, and, before proceeding, shall positively ascertain that the draw is properly closed for the passage of trains; except that if the drawbridge is between two railroad crossings at grade, within six hundred feet of each other, one stop only shall be required for such crossings and drawbridge.

SECTION 135. A railroad corporation which neglects to comply with the provisions of sections one hundred and thirty-two and one hundred and thirty-four shall forfeit one hundred dollars for each day such neglect is continued; and an engineer or draw-tender who violates any provision of said sections or any regulation established in conformity therewith for such drawbridge by the corporation by which he is employed shall forfeit one hundred dollars for each offence, which shall be recovered in the county in which the offence is committed, to the use of the informer.

SECTION 136. Whoever violates any provision of the seven preceding sections, shall, unless otherwise therein provided, forfeit not less than three nor more than fifty dollars for each offence. Whoever wilfully injures or defaces any such drawbridge or wharf or pier appurtenant thereto, or any railroad bridge, wharf or pier, shall forfeit not less than three nor more than fifty dollars for each offence. Whoever without the consent of the draw-tender opens or wilfully obstructs the draw, or wilfully makes fast or moors any scow, raft or other vessel in such manner as to obstruct passage to or through said draw, or wilfully hinders a draw-tender in the performance of his duties, shall forfeit not less than fifty nor more than one hundred dollars for each offence.

Stations.

SECTION 137. A railroad corporation which has established and maintained a passenger station throughout the year for five consecutive years at any point upon its railroad shall not abandon such station, unless it is relocated under the provisions of the following section, nor substantially diminish the accommodation furnished by the stopping of trains thereat as compared with that furnished at other stations on the same railroad. The supreme judicial court, upon an information filed by the attorney-general at the relation of ten legal voters of the city or town in which such station is located, shall have jurisdiction in equity to restrain the violation of the provisions of this section.

SECTION 138. A railroad corporation may relocate passenger stations and freight depots, with the approval in writing of the board of railroad commissioners and of the board of aldermen of the city or the selectmen of the town in which such stations or depots are situated. 137 Mass. 45. 158 Mass. 104.

SECTION 139. Every railroad corporation shall indicate to its passengers the name of each way station by placing at or near the station a proper and conspicuous sign or signs, and shall forfeit fifty dollars for each violation of the provisions of this section.

SECTION 140. If one railroad corporation occupies or uses, or has a right to occupy, enter upon and use, a station, railroad or grounds of another, or any portion thereof, the board of railroad commissioners, upon petition of either party, and after notice to the other, and a hearing, shall determine the compensation to be paid for such occupancy and use. Its award shall be binding upon the parties thereto for five years, and thereafter until it is revised or altered by said board, and upon the request in writing of a party affected thereby, filed within thirty days after the rendering thereof, the award shall be filed in the supreme judicial court which shall have jurisdiction to revise the same as if the award had been made by a commission appointed by said court.

Switches, Bridge Guards, etc.

SECTION 141. Every switch which is laid in a railroad track used by passenger or mixed trains shall be a safety switch of a type approved in writing by the board of railroad commissioners. For each switch laid in violation of the provisions of this section, the railroad corporation shall forfeit two hundred dollars, and the further sum of five dollars for each day such switch is maintained.

SECTION 142. The frogs, switches and guard rails, except guard rails on bridges, which are in or connected with the railroad tracks operated or used by any railroad corporation shall be kept so blocked by some method approved by the board of railroad commissioners as to prevent employees from being

Abandonment of passenger stations regulated. 1865, 175. 1874, 372, § 116. P. S. 112, § 156. R. L. 111, § 178. 137 Mass. 45. 158 Mass. 104.

Relocation of stations and freight depot. 1872, 162. 1874, 372, § 117. P. S. 112, § 157. R. L. 111, § 179.

Way stations to be indicated by signs. 1879, 106. P. S. 112, § 158. R. L. 111, § 180.

Compensation for joint occupation. 1893, 142. R. L. 111, § 181.

Safety switches. 1871, 24. 1874, 372, § 118. P. S. 112, § 159. R. L. 111, § 182.

Blocked switches. 1886, 120. 1894, 41. R. L. 111, § 183.

caught therein. A railroad corporation which violates the provisions of this section shall be punished by a fine of not less than ten nor more than one hundred dollars for each offence.

Bridge guards.
1869, 308,
§§ 2, 3.
1870, 276.
1874, 226; 372,
§ 119.
1881, 68.
P. S. 112,
§ 160.
R. L. 111,
§ 184.
175 Mass. 150.
Amended.
1913, 161.

SECTION 143. Every railroad corporation, at every bridge or other structure, any portion of which crosses the railroad above the track, shall erect and maintain, in a manner prescribed by the board of railroad commissioners, suitable bridge guards, of a type approved by said board, *except at places where, and so long as, it is specially exempted from the duty of so doing by said board.* A corporation which neglects to comply with the provisions of this section shall forfeit fifty dollars for each month's neglect. Whoever wilfully destroys or breaks any such bridge guard shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days.*

Acts of 1913, Chapter 161.

An Act relative to Bridge Guards at Bridges or Other Structures over Railroads.

1906, 463,
Part II, § 143,
amended.

SECTION 1. Section one hundred and forty-three of Part II of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby amended by inserting after the word "board", in the sixth line, the words:— *except at places where, and so long as, it is specially exempted from the duty of so doing by said board, — so as to read as follows:— Section 143. [For § 143 as amended, see above.]*

Signals, etc., at Crossings.

Stopping of
trains at grade
crossings.
1855, 452, § 1.
1859, 39; 126,
§ 1.
G. S. 63,
§§ 93, 94.
1872, 313.
1874, 372,
§ 121.
P. S. 112,
§ 161.
R. L. 111,
§ 185.

SECTION 144. If two railroads cross each other at the same level, the engineer of every freight train and, if both railroads are used for passenger traffic, of every passenger train, upon approaching such crossing, shall stop his engine within five hundred feet therefrom, and shall not resume his course until signalled so to do, when he shall pass slowly over the crossing; but one stop shall be sufficient for all such crossings within six hundred feet of each other upon the same railroad. Every engineer who fails so to stop his engine shall forfeit one hundred dollars for each offence; and the corporation on whose railroad the offence is committed shall forfeit the further amount of three hundred dollars.

Board may
prescribe rules
for crossings.

SECTION 145. The board of railroad commissioners shall make general regulations for all such crossings or special regu-

* Under section 143 of Part II., Chapter 463 of the Acts of 1906, the Board prescribes the following regulations:—

1. The standard forms of pendent or "whip-cord" and of horizontal-bar bridge-guards or "tell-tales" now in common use on the leading railroads of this State, are approved by the Board.

2. On main tracks and on main-line side tracks, the guard should be placed not less than 100 nor more than 200 feet from the bridge or other overhead structure.

3. In yards and on switching tracks the guards should be placed not less than 50 nor more than 100 feet from the bridge or other overhead structure.

4. The distance is to be measured in all cases from a point over the centre of the protected track in the near side of the bridge or structure, in the direction of approach by trains; and a guard is to be maintained on one or on both sides of the bridge or structure according as trains are run on the track in one or in both directions.

5. Where two bridges or structures are not more than 200 feet apart in the clear, only one guard between them is required, the same to be placed midway between the two.

6. The guard should be erected and maintained so that the same, or the lowest part thereof, will hang or swing about three inches lower than the lowest part of the bridge or structure which it is designed to protect.

lations for such particular crossings as it may designate, and in such detail as it may consider expedient; and the supreme judicial court may issue any processes necessary to secure the enforcement of such regulations, or, upon the petition of said board, may enjoin the running of trains on a railroad upon which any regulation relative to such crossing is not exactly observed. The approval of said board shall be required for a system of signals to be established and maintained in concert by corporations operating railroads which cross each other; but no such regulation or system of signals shall exempt a railroad upon or across which passenger trains are run from the requirements of the preceding section, unless a system of interlocking or automatic signals, approved in writing by said board, is adopted by both corporations.

1874, 372,
§ 122.
1881, 143.
P. S. 112,
§ 162.
R. L. 111,
§ 186.

SECTION 146. The board of railroad commissioners may, on the application of a railroad corporation whose railroad crosses another railroad at the same level, after notice to the parties and a hearing, authorize the applicant at its own expense, to establish and maintain a system of interlocking or automatic signals at any crossing of said railroads, and to erect and maintain the necessary wires, rods, signal posts and signals, in such manner as said board shall prescribe. Such corporation, after the system has been established and approved in writing by said board, shall be exempt as to such crossing from the requirements of section one hundred and forty-four so long as said board continues its approval. Upon payment to such corporation by the corporation owning or operating the other railroad at such crossing of so much of the cost of establishing such system of signals as, upon petition of the latter corporation and a hearing, is awarded by said board, both railroad corporations shall, as to that crossing, be exempted from the requirements of said section. Until such payment the latter corporation shall semi-annually contribute toward the expense of operating said signals an amount equal to the cost to it of operating the signals used by it at said crossing before the establishment of the signals herein provided for. After the payment of such award the expense of maintaining and operating such system of signals shall be borne by the two railroad corporations according to the proportions fixed by the award for paying the original cost of the signals. So much of the award as relates to the cost of maintaining and operating said signals may, at the request of either party, be revised at the expiration of five years from the original award or from any revision thereof.

Interlocking
signals.
1885, 85.
R. L. 111,
§ 187.
200 Mass. 444.

SECTION 147. Every railroad corporation shall cause a bell of at least thirty-five pounds in weight, and a steam whistle, to be placed on each locomotive engine passing upon its railroad; and such bell shall be rung or at least three separate and distinct blasts of such whistle sounded at the distance of at least eighty rods from the place where the railroad crosses upon the same level any highway, town way or travelled place over which

Bell to be rung
or whistle
sounded.
1835, 148, § 4.
R. S. 39, § 78.
1859, 125, § 3.
G. S. 63, § 83.
1862, 81, § 1.
1874, 372,
§ 123.
P. S. 112, § 163.
1890, 173.

R. L. 111,
 § 188.
 2 Cush. 539.
 10 Cush. 562.
 125 Mass. 64.
 140 Mass. 239.
 153 Mass. 57,
 82.
 157 Mass. 340.
 159 Mass. 32.
 162 Mass. 135.
 170 Mass. 430.
 183 Mass. 393.

Sounding of
 whistles
 regulated.
 1885, 334.
 1891, 204.
 R. L. 111,
 § 189.
 1907, 431, § 3.
 [See after, *Part*
II, § 247.]
 203 Mass. 455.

Signboards at
 crossings of
 ways.
 1835, 148, § 4.
 R. S. 39, § 79.
 1849, 222, § 2.
 1859, 125, § 1.
 G. S. 63, § 84.
 1862, 81, § 2.
 1872, 191.
 1874, 372,
 § 124.
 1875, 219.
 1878, 68.
 P. S. 112,
 § 164.
 R. L. 111,
 § 190.

— at crossings
 of travelled
 places, when.
 1859, 125, § 2.
 G. S. 63, § 85.
 1874, 372,
 § 125.
 P. S. 112,
 § 165.
 R. L. 111,
 § 191.
 7 Gray, 98.
 140 Mass. 238.
 153 Mass. 57.
 170 Mass. 430.
 203 Mass. 462.
 210 Mass. 243.

Gates, etc., at
 crossings.
 1835, 148,
 §§ 4, 6.
 R. S. 39, § 80.
 1849, 222,
 §§ 1-3.
 1851, 317.
 1854, 401.
 1856, 245.
 G. S. 63,
 §§ 86-89, 92.

a signboard is required to be maintained as provided in sections one hundred and forty-nine and one hundred and fifty; and such bell shall be rung or such whistle sounded continuously or alternately until the engine has crossed such way or travelled place. The provisions of this section shall not affect the authority conferred upon the board of railroad commissioners by the provisions of the following section.

187 Mass. 217.

208 Mass. 156, 456.

210 Mass. 180, 243, 305, 307.

186 Mass. 474.

SECTION 148. The board of railroad commissioners, upon petition, and after notice to the railroad corporation and a public hearing, may, for good cause shown, recommend to such railroad corporation such changes as it considers proper in the manner of making up and shifting freight trains or freight cars, and to the sounding of whistles on locomotives, and it may by an order in writing forbid or regulate the sounding of whistles on the locomotives of such corporation at any specified grade crossings of the tracks of such corporation with any highway or public way. The corporation which is subject to the provisions of such order shall thereafter, until the order shall have been modified or annulled by said board, conform in all respects to the terms thereof.

SECTION 149. Every railroad corporation shall cause boards, supported by posts or otherwise at such height as to be easily seen by travellers, and not obstructing travel, containing on each side in capital letters at least nine inches long the following inscription, — RAILROAD CROSSING — LOOK OUT FOR THE ENGINE, — to be placed and constantly maintained across each highway or town way where it is crossed by the railroad at the same level; or the corporation may substitute therefor warning boards on each side of the crossing, of such form, size and description as the board of railroad commissioners shall approve.

153 Mass. 57.

162 Mass. 135.

203 Mass. 462.

210 Mass. 243.

SECTION 150. The board of aldermen of a city or the selectmen of a town in which a travelled place is crossed by a railroad at the same level, if of opinion that it is necessary for the better security of the public that boards such as are described in the preceding section should be maintained at such travelled place, may in writing request the railroad corporation to erect and maintain them. If it refuses or neglects so to do, they may apply to the board of railroad commissioners. If said board, after public notice and a hearing, decides that such erection is necessary for the better security of the public, the corporation shall comply with such decision.

SECTION 151. The board of railroad commissioners, after notice to a railroad corporation whose railroad crosses a highway, town way or travelled place at the same level, and a hearing, may direct in writing that gates shall be erected at said crossing across said way or place and that an agent be stationed thereat to open and close such gates when an engine or train passes, or that a flagman be stationed at the crossing, who shall

display a flag when an engine or train passes, or that such crossing shall be provided with such an electric signal as said board determines the better security of human life or the convenience of the public travel requires, and the corporation shall comply with such order.

121 Mass. 127.

129 Mass. 364.

153 Mass. 167.

210 Mass. 243.

1864, 152, § 3.
1865, 239, § 2.
1874, 372,
§ 126.
P. S. 112, § 166.
1883, 117.
1888, 240.
R. L. 111, § 192.

SECTION 152. The supreme judicial court shall have jurisdiction in equity to enforce compliance with the provisions of the three preceding sections, and a railroad corporation which unreasonably neglects to comply with an order or decision made under the provisions of the two preceding sections shall forfeit not more than one thousand dollars for every such neglect.

P. S. 112, §§ 164, 168.

R. L. 111, § 193.

Enforcement
of preceding
sections.
1835, 148, § 5.
R. S. 39, § 81.
G. S. 63, § 90.
1864, 152, § 4.
1874, 372,
§ 128.
1875, 219.

SECTION 153. The board of railroad commissioners may require a railroad corporation whose railroad crosses a highway by a crossing above the level of the highway to give such signal as said board may designate of the approach of trains to such crossing. Said board may in each case determine the nature of the signal to be given, and, in its discretion, may require an automatic signal. The supreme judicial court shall have jurisdiction in equity to compel railroad corporations to comply with orders made by said board under the provisions of this section.

Signals
at overhead
crossings.
1891, 129.
R. L. 111,
§ 194.

SECTION 154. If the view of a railroad crossing or highway at grade is obstructed by standing wood in woodlands, the railroad corporation or ten citizens of a town may petition the county commissioners for the county in which such crossing is situated for the removal of such standing wood; and the commissioners after notice and a hearing, shall make such orders as to such removal as the public safety demands. They shall also prescribe the limits within which such standing wood shall be taken, and shall determine the damage sustained. Such damage and the expense incident thereto shall be assessed and collected in the manner provided for the taking of land by railroad corporations, and shall be paid by the railroad corporation. Either party who is aggrieved by the decision of the commissioners, may appeal therefrom in the manner provided in section eighty-seven.

Removal of
standing wood
at crossings.
1889, 371.
R. L. 111,
§ 195.

SECTION 155. A railroad corporation, or receiver, or assignee thereof, or its or his servant or agent, shall not wilfully or negligently obstruct or unnecessarily or unreasonably use or occupy a highway, town way or street, or in any case obstruct, use or occupy it with cars or engines for more than five minutes at one time; and if a highway, town way or street, has been thus used or occupied with cars or engines, the railroad corporation, or receiver or assignee thereof, shall not again use or occupy it with the cars or engines of a freight train, until a sufficient time, not less than three minutes, has been allowed for the passage across the railroad of such travellers as were ready and waiting to cross when the former occupation ceased. A

Penalty on
corporation
for obstructing
highways, etc.
1854, 378.
G. S. 63, § 68.
1871, 83, 316.
1874, 372,
§ 129.
P. S. 112,
§ 169.
1895, 173.
R. L. 111,
§ 196.
112 Mass. 412.
135 Mass. 550.
156 Mass. 159.
169 Mass. 403.
202 Mass. 395,
397, 398.
206 Mass. 419,
426.

railroad corporation, receiver, or assignee thereof, who violates the provisions of this section, shall forfeit one hundred dollars.

Occupation of ways by cars regulated. 1885, 110. R. L. 111, § 197.

SECTION 156. Upon an application to the board of railroad commissioners, according to the provisions of section ten of Part I, stating that a crossing of a railroad with a highway, town way or street at the same level is improperly used by a railroad corporation with its freight engines, freight cars or freight trains to the unreasonable inconvenience or danger of the public, said board, after notice, shall hear the parties; and, if public convenience or safety so requires, it may direct that after a date to be fixed by it such railroad corporation shall not use such crossing or any part thereof for making up, connecting or disconnecting freight trains, or the engines or cars of such trains, or for the purpose of distributing freight or freight cars; and to prevent the same may prescribe such changes to be made in the construction of side tracks, branches and connections, in proximity to such crossings, and such regulations limiting the use of such crossings, as may be necessary. Said board may at any time modify its order after a hearing and for cause shown. The supreme judicial court shall have jurisdiction in equity on application of the attorney-general to enforce compliance with such order.

Equipment of Engines and Cars.

Electricity a motive power. 1892, 110. R. L. 111, § 198. Amended by 1910, 355.

SECTION 157. A railroad corporation which is subject to the provisions of this act may operate its railroad by electricity, or by such other power as may duly be approved by the board of railroad commissioners.

Acts of 1910, Chapter 355.

An Act to authorize Railroad Corporations to operate their Railroads by Electricity or Other Power.

1906, Part II, 463, § 157, amended.

SECTION 1. Section one hundred and fifty-seven of Part II of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby amended by adding thereto the words: — or by such other power as may duly be approved by the board of railroad commissioners, — so as to read as follows: — *Section 157.* A railroad corporation which is subject to the provisions of this act may operate its railroad by electricity, or by such other power as may duly be approved by the board of railroad commissioners.

SECTION 2. This act shall take effect upon its passage. [*Approved April 6, 1910.*]

Brakes and brakemen. 1837, 226, § 8. 1849, 161. G. S. 63, §§ 81, 82. 1869, 426. 1874, 372, § 130. P. S. 112, § 170.

SECTION 158. Every railroad corporation shall cause a sufficient brake to be attached to every car used upon its railroad for the transportation of passengers, and to every car used for the transportation of freight, except four-wheel cars used only for freight; and shall cause at least one brakeman for every two cars in a passenger train to be stationed thereon, and one brake-

man for the last car of every freight train to be stationed thereon. A corporation which violates the provisions of this section shall forfeit not more than one hundred dollars.*

R. L. 111,
§ 200.
206 Mass. 560.
See 1911, 539.

Acts of 1913, Chapter 784, § 24.

SECTION 24. Whenever the commission shall be of opinion, after a hearing had upon its own motion or upon complaint, that the number of men forming a train crew of any train operating in the commonwealth is not sufficient to operate said train for the safety of the public and the employees of the railroad, it shall thereupon order such changes as it may deem necessary.

Train crews —
changes may
be ordered.

SECTION 159. A railroad corporation, in moving traffic between points in this commonwealth, shall not use any locomotive which is not equipped with a power driving wheel brake and appliances for operating the train brake system; nor run any train in such traffic unless a sufficient number of cars in it are so equipped with power or train brakes that its speed can be controlled by the engineer of the locomotive which is drawing such train, without the use of the common hand brakes by the brakemen. When such corporation has equipped a sufficient number of its cars with such power or train brakes, it may lawfully refuse to receive from connecting lines of railroad any cars used in such traffic which are not sufficiently equipped with such power or train brakes as will work and readily interchange with the brakes in use on its own cars.

Safety ap-
pliances for
freight trains.
1895, 362, § 1.
R. L. 111,
§ 201.

SECTION 160. A railroad corporation which operates a railroad or any portion thereof within this commonwealth shall cause to be placed upon both ends of every freight car owned by it and which it may lawfully use such automatic or other safety coupler as the board of railroad commissioners, after an examination and test, may prescribe, and said board may annul any such requirement made by it. The supreme judicial court, upon the application of the attorney-general, may enforce the provisions of this section.

Safety
couplers on
freight cars.
1884, 222.
R. L. 111,
§ 202.

SECTION 161. A railroad corporation, in moving traffic between points in this commonwealth, shall not haul or use, or permit to be hauled or used, on its lines any car which is not equipped with couplers coupling automatically by impact, and uncoupling otherwise than by going between the cars.

Automatic
couplers for
freight cars.
1895, 362, § 2.
R. L. 111,
§ 203.
182 Mass. 348.
188 Mass. 390.

* Under date of August 3, 1912, the board of railroad commissioners made the following recommendations with respect to the manning of freight trains: —

- (1) That all freight trains operated on main line tracks, and all freight trains operated on branch tracks for a distance of five miles or more, shall be provided with at least two brakemen.
- (2) That all freight trains propelled by two locomotives for a distance of ten or more miles, shall be provided with at least three brakemen.
- (3) That all freight trains while using the opposite main track for the purpose of allowing trains to pass, or for the purpose of setting out and taking in cars, where a brakeman is required to protect the opposite track, shall be provided with at least three brakemen.
- (4) That all light engines operated for a distance of ten or more miles shall be provided with a brakeman.

It is not the intention of the Board that the foregoing recommendations shall be construed to apply to cases of emergency that may from time to time arise in the operation of the railroad.

September 3, 1912, is hereby fixed as the time when the foregoing recommendations shall become effective, and the Board reserves the right to revise the same should occasion require.

Grab irons.
1895, 362, § 3.
R. L. 111,
§ 204.

SECTION 162. A railroad corporation, in moving traffic between points in this commonwealth, until otherwise ordered by the board of railroad commissioners, shall not use any car, except flat cars equipped with automatic couplers, which is not provided with secure grab irons or hand holds on the ends and sides for greater security to men in coupling and uncoupling cars.

Standard height of drawbars for freight cars.
1895, 362, § 4.
R. L. 111,
§ 205.

SECTION 163. The standard height of drawbars for freight cars, measured perpendicularly from the level of the top of the rails to the centres of the drawbars, shall be thirty-four and one half inches for standard gauge railroads and twenty-six inches for narrow gauge railroads, with a maximum variation from such standard height, in either case, of three inches between the drawbars of empty and loaded cars; and no freight car with drawbars which do not comply with the above standard, whether loaded or unloaded, shall be used in moving traffic between points in this commonwealth.

Penalty.
1895, 362, § 5.
R. L. 111,
§ 206.

SECTION 164. A railroad corporation which violates any of the provisions of sections one hundred and fifty-nine, one hundred and sixty-one, one hundred and sixty-two and one hundred and sixty-three, shall, for each offence, forfeit one hundred dollars, which shall be recovered in an action of tort to the use of the commonwealth by the attorney-general or the district attorney for the district in which such offence was committed.

Limitation of preceding sections.
1895, 362, § 5.
R. L. 111,
§ 207.

SECTION 165. The provisions of sections one hundred and fifty-nine and one hundred and sixty-one to one hundred and sixty-four, inclusive, shall not apply to trains composed of four-wheel cars, or to locomotives used in hauling such trains.

Extension of time for equipment.
1895, 362, § 6.
R. L. 111,
§ 208.

SECTION 166. The board of railroad commissioners may from time to time, after hearing and for good cause, exempt, until a date fixed by it, any railroad corporation from the requirements of sections one hundred and fifty-nine, one hundred and sixty-one, one hundred and sixty-two and one hundred and sixty-three.

Assumption of risk by employee restricted.
1895, 362, § 7.
R. L. 111,
§ 209.
188 Mass. 390.
Amended,
1908, 553, § 1.
Repealed,
1909, 514,
§ 146.
Now 1909, 514,
§ 143.

[SECTION 167. An employee of a railroad corporation who is injured by any locomotive, car or train which is used contrary to the provisions of sections one hundred and fifty-nine, one hundred and sixty-one, one hundred and sixty-two and one hundred and sixty-three, shall not be deemed to have assumed the risk of such injury, although he continues in the employment of such corporation after the unlawful use of such locomotive, car or train has been brought to his knowledge. *An employee of a railroad corporation who is injured by any locomotive, car or train by reason of the negligence of any other employee of the corporation shall not be deemed to have assumed the risk of such injury.*]

Acts of 1908, Chapter 553.

An Act to limit the Assumption of Risk by an Employee of a Railroad Corporation.

1906, 463,
Part 11, § 167,
amended.

SECTION 1. Section one hundred and sixty-seven of Part II of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby amended by adding at the end thereof the words:— An employee of a railroad corporation who is injured by any locomotive,

car or train by reason of the negligence of any other employee of the corporation shall not be deemed to have assumed the risk of such injury, — so as to read as follows: — *Section 167. [For § 167 as amended, see above.]*

Acts of 1909, Chapter 514, §§ 127-143, 145, 146.

LIABILITY OF EMPLOYERS TO EMPLOYEES.

SECTION 127. If personal injury is caused to an employee, who, at the time of the injury, is in the exercise of due care by reason of:

First, A defect in the condition of the ways, works or machinery connected with or used in the business of the employer, which arose from, or had not been discovered or remedied in consequence of, the negligence of the employer or of a person in his service who had been entrusted by him with the duty of seeing that the ways, works or machinery were in proper condition; or,

210 Mass. 88.

212 Mass. 171, 191, 274.

213 Mass. 250.

Second, The negligence of a person in the service of the employer who was entrusted with and was exercising superintendence and whose sole or principal duty was that of superintendence, or, in the absence of such superintendent, of a person acting as superintendent with the authority or consent of such employer; or,

Liability of employer to employee.
R. L. 106, § 71.
1908, 420.
Limited, 1811, 751, Part I, § 4.
204 Mass. 45, 479.
208 Mass. 231.
209 Mass. 81, 86.

203 Mass. 260.
204 Mass. 200.
207 Mass. 204.
212 Mass. 275.
213 Mass. 145, 527.

Third, The negligence of a person in the service of the employer who was in charge or control of a signal, switch, locomotive engine, elevated train or train upon a railroad or elevated railway;

208 Mass. 16, 306.
209 Mass. 82.
210 Mass. 177, 274.

The employee, or his legal representatives, shall, subject to the provisions of the nine following sections, have the same rights to compensation and of action against the employer as if he had not been an employee, nor in the service, nor engaged in the work, of the employer.

A car which is in use by, or which is in possession of, a railroad corporation, or an elevated car which is in use by or which is in possession of an elevated railway corporation, shall be considered as a part of the ways, works or machinery of the corporation which uses or has it in possession, within the meaning of clause one of this section, whether it is owned by such corporation or by some other company or person. One or more cars which are in motion, whether attached to an engine or not, shall constitute a train within the meaning of clause three of this section, and whoever, as a part of his duty for the time being, physically controls or directs the movements of a signal, switch, locomotive engine, elevated train or train shall be deemed to be a person in charge or control of a signal, switch, locomotive engine, elevated train or train within the meaning of said clause.

SECTION 128. If the injury described in the preceding section results in the death of the employee, and such death is not instantaneous or is preceded by conscious suffering, and if there is any person who would have been entitled to bring an action under the provisions of the following section, the legal representatives of said employee may, in the action brought under the provisions of the preceding section, recover damages for the death in addition to those for the injury; and in the same action under a separate count at common law, may recover damages for conscious suffering resulting from the same injury.

209 Mass. 82.

210 Mass. 88.

213 Mass. 250.

Action if injury followed by death not instantaneous or death with conscious suffering.
R. L. 106, § 72.
1906, 370.
Limited, 1911, 751, Part I, § 4.
203 Mass. 274.
208 Mass. 298.

SECTION 129. If, as the result of the negligence of an employer himself, or of a person for whose negligence an employer is liable under the provisions of section one hundred and twenty-seven, an employee is instantly killed, or dies without conscious suffering, his widow or, if he leaves no widow, his next of kin, who, at the time of his death, were

— if injury followed by instantaneous death or death without conscious suffering.
210 Mass. 88.

212 Mass. 191.
213 Mass. 250.
R. L. 106, § 73.

Amendment of
actions brought
under two
preceding sec-
tions.
1908, 457.
210 Mass. 88.
213 Mass. 250.
Limited,
1911, 751,
Part I, § 4.

Damages.
R. L. 106, § 74.
210 Mass. 88.
Limited,
1911, 751,
Part I, § 4.

dependent upon his wages for support, shall have a right of action for damages against the employer. 1908, 457. 1911, 751, Part I, § 4.

SECTION 130. If an action is brought under the provisions of the preceding section by the widow of the employee, or by the next of kin, who may have such right of action, or if the action is brought under the provisions of section one hundred and twenty-seven by the legal representatives, such action shall not fail by reason of the fact that it should have been brought under the other section, but may be so amended as to provide against such failure at any time prior to final judgment.

SECTION 131. If under the provisions of sections one hundred and twenty-eight and one hundred and twenty-nine damages are awarded for the death, they shall be assessed with reference to the degree of culpability of the employer or of the person for whose negligence the employer is liable.

The amount of damages which may be awarded in an action under the provisions of section one hundred and twenty-seven for a personal injury to an employee, in which no damages for his death are awarded under the provisions of section one hundred and twenty-eight shall not exceed four thousand dollars.

The amount of damages which may be awarded in such action, if damages for his death are awarded under the provisions of section one hundred and twenty-eight shall not exceed five thousand dollars for both the injury and the death, and shall be apportioned by the jury between the legal representatives of the employee and the persons who would have been entitled under the provisions of section one hundred and twenty-nine to bring an action for his death if it had been instantaneous or without conscious suffering.

The amount of damages which may be awarded in an action brought under the provisions of section one hundred and twenty-nine shall not be less than five hundred nor more than five thousand dollars.

Notice.
R. L. 106, § 75.
Limited,
1911, 751,
Part I, § 4.
210 Mass. 88,
89.
213 Mass. 250.

SECTION 132. No action for the recovery of damages for injury or death under the provisions of the five preceding sections shall be maintained unless notice of the time, place and cause of the injury is given to the employer within sixty days, and the action is commenced within one year, after the accident which causes the injury or death. Such notice shall be in writing, signed by the person injured or by a person in his behalf; but if, from physical or mental incapacity it is impossible for the person injured to give the notice within the time provided in this section, he may give it within ten days after such incapacity has been removed, and if he dies without having given notice and without having been for ten days at any time after his injury of sufficient capacity to give it, his executor or administrator may give such notice within sixty days after his appointment. A notice given under the provisions of this section shall not be held invalid or insufficient solely by reason of an inaccuracy in stating the time, place or cause of the injury if it is shown that there was no intention to mislead, and that the employer was not in fact misled thereby.

Liability of an
employer to
the employee
of a contractor
or sub-con-
tractor.
R. L. 106, § 76.
Limited,
1911, 751,
Part I, § 4.
213 Mass. 250.

SECTION 133. If an employer enters into a contract, written or verbal, with an independent contractor to do a part of such employer's work, or if such contractor enters into a contract with a sub-contractor to do all or any part of the work comprised in such contractor's work with the employer, such contract or sub-contract shall not bar the liability of the employer for injuries to the employees of such contractor or sub-contractor caused by any defect in the condition of the ways, works, machinery or plant, if they are the property of the employer or are furnished by him and if such defect arose, or had not been discovered or

remedied, through the negligence of the employer or of some person entrusted by him with the duty of seeing that they were in proper condition.

SECTION 134. An employee or his legal representatives shall not be entitled under the provisions of sections one hundred and twenty-seven to one hundred and thirty-one, inclusive, to any right of action for damages to his employer if such employee knew of the defect or negligence which caused the injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer, or to some person superior to himself in the service of the employer who was entrusted with general superintendence.

Employer not liable, when. Limited, 1911, 751, Part I, § 4. R. L. 106, § 77.

SECTION 135. An employer who shall have contributed to an insurance fund created and maintained for the mutual purpose of indemnifying an employee for personal injuries for which compensation may be recovered under the provisions of sections one hundred and twenty-seven to one hundred and thirty-one, inclusive, of this act or to any relief society formed under the provisions of sections seventeen, eighteen and nineteen of chapter one hundred and twenty-five of the Revised Laws, or under the provisions of sections forty-six, forty-seven and forty-eight of Part I of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six, may prove in mitigation of the damages recoverable by an employee under the provisions of said sections, such proportion of the pecuniary benefit which has been received by such employee from any such fund or society on account of such contribution of said employer as the contribution of such employer to such fund or society bears to the whole contribution thereto.

Evidence in reduction of damages. Limited, 1911, 751, Part I, § 4. R. L. 106, § 78.

SECTION 136. An employer of labor may submit to the state board of conciliation and arbitration a plan of compensation for employees in his employ, providing for payments to them in the event of injury in the course of their employment, based upon a certain percentage of their average earnings, and without reference to legal liability under the common law of the employers' liability act. After examination of such plan of compensation, and a public hearing thereon after public notice thereof, said board may, if it considers the plan fair and just to the employee, give its approval thereof by its certificate attached thereto; and, thereafter, the employer may enter into a contract with his employees by which they shall release him from liability in case of injury in the course of said employment and accept in lieu thereof the compensation provided in said plan.

Plans of compensation for injured employees. 1908, 489, §§ 1, 2.

SECTION 137. Either parent or the guardian of any minor employee may agree to said plan of compensation in behalf of the minor. Such agreement shall be in writing signed by the employee, or, in the case of a minor employee, by either parent or the guardian, in the presence of two witnesses, of whom one shall be an employee at the time of such signature.

Form of agreement and method of signing. 1908, 489, § 3.

SECTION 138. No employer shall require as a condition of employment that any employee shall assent to any plan of compensation or in any way waive his legal right to recover damages for an injury outside the provisions of such plan, and no contract under such plan of compensation shall be binding for more than one year from the date thereof.

Agreement to plan to be voluntary. Duration. 1908, 489, §§ 4, 5.

SECTION 139. The employees of any employer of labor, numbering at least ten per cent of those regularly employed during the preceding year, may submit to the state board of conciliation and arbitration a plan of compensation such as is described in section one hundred and thirty-six of this act. Such plan shall be referred to the employer, and in case no agreement between the employer and employees is reached within thirty days and reported to said board, then after examination of the

Employees, certain, to submit to the board of conciliation, etc., a plan of compensation, etc. 1908, 489. 1909, 211.

said plan of compensation, and a public hearing thereon after public notice thereof, the board of conciliation and arbitration may, if it considers the same fair and just to the employer and employees, recommend to the employer the adoption of the same. Upon notice of acceptance of the plan duly filed by the employer the plan shall be deemed to be in force precisely as if it had been submitted and approved under the provisions of the preceding sections of this act.

Contracts for exemption of employer from liability for injury forbidden.
R. L. 106, § 16.
1908, 489, § 6.
Protection of interests of employees.
1908, 380.
Limited, 1911, 751, Part I, § 4.

SECTION 140. Except as provided in the four preceding sections, no person shall, by a special contract with his employees, exempt himself from liability which he may be under to them for injuries suffered by them in their employment and resulting from the negligence of the employer or of a person in his employ.

SECTION 141. A justice of the superior court may, upon petition setting forth in ordinary language that the servant or employee of a certain firm, person, corporation or association has been injured in the course of his employment, through some defect in the ways, works or machinery owned or used by the employer, and that it is necessary in order to protect the interests of the injured person that an examination should be made of the ways, works or machinery through whose defect the injury occurred, and after such notice to the employer as any justice of said court may direct or approve, and a hearing, grant an order directing the employer or person in control of such ways, works or machinery to permit the person named in said order to make such examination, under such conditions as shall be set forth in the order.

Extent of application of preceding sections.

SECTION 142. The provisions of the fourteen preceding sections shall not apply to injuries caused to domestic servants or farm laborers by fellow employees. R. L. 106, § 79. *Limited, 1911, 751, Part I, § 4.*

Assumption of risk by railroad employees.
1906, 463,
Part II, § 167.
Limited, 1911, 751, Part I, § 4.
209 Mass. 495.

SECTION 143. An employee of a railroad corporation who is injured by any locomotive, car or train which is used contrary to the provisions of sections one hundred and fifty-nine, one hundred and sixty-one, one hundred and sixty-two and one hundred and sixty-three of Part II of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six, shall not be deemed to have assumed the risk of such injury, although he continues in the employment of such corporation after the unlawful use of such locomotive, car or train has been brought to his knowledge. An employee of a railroad corporation who is injured by any locomotive, car or train by reason of the negligence of any other employee of the corporation shall not be deemed to have assumed the risk of such injury.

REPEAL.

Repeal.
210 Mass. 89.

SECTION 145. Section fifty-seven of chapter twenty-five of the Revised Laws, sections thirty-eight to forty-seven, inclusive, of chapter one hundred and four of the Revised Laws, chapter one hundred and six of the Revised Laws, sections eleven and twelve of chapter one hundred and eight of the Revised Laws, section thirty-four of chapter one hundred and eighty-nine of the Revised Laws, section twenty of chapter two hundred and twenty-four of the Revised Laws; chapters one hundred and eighty-three, three hundred and twenty-two, three hundred and fifty, three hundred and eighty-four, four hundred and thirty, four hundred and thirty-five, four hundred and forty-six and four hundred and fifty of the acts of the year nineteen hundred and two; chapters two hundred and seventy-five and four hundred and seventy-five of the acts of the year nineteen hundred and three; chapters three hundred and eleven, three hundred and thirteen, three hundred and fifteen, three hundred and twenty, three hundred and thirty-four, three hundred and thirty-five,

three hundred and forty-three, three hundred and forty-seven, three hundred and forty-nine, three hundred and ninety-seven, three hundred and ninety-nine and four hundred and thirty-two of the acts of the year nineteen hundred and four; chapters two hundred and thirteen, two hundred and thirty-one, two hundred and thirty-eight, two hundred and sixty-seven, three hundred and four and three hundred and eight of the acts of the year nineteen hundred and five; chapters two hundred and fifty, two hundred and eighty-four, three hundred and seventy, three hundred and ninety, four hundred and twenty-seven, four hundred and thirty-five, section one hundred and sixty-seven of Part II of chapter four hundred and sixty-three, chapters four hundred and ninety-nine and five hundred and seventeen of the acts of the year nineteen hundred and six; chapters one hundred and thirty-five, one hundred and sixty-four, one hundred and ninety-three, two hundred and twenty-four, two hundred and sixty-seven, two hundred and sixty-nine, section two of chapter five hundred and three, chapters five hundred and seventy and five hundred and seventy-seven of the acts of the year nineteen hundred and seven; chapters two hundred and seventeen, two hundred and twenty-eight, three hundred and six, three hundred and eighty, four hundred and twenty, four hundred and fifty-seven, four hundred and eighty-five, four hundred and eighty-nine, five hundred and forty-seven, six hundred and forty-five and six hundred and fifty of the acts of the year nineteen hundred and eight, and chapter two hundred and eleven of the acts of the year nineteen hundred and nine, and all other acts and parts of acts inconsistent herewith are hereby repealed.

SECTION 146. The provisions of this act, so far as they are the same as those of existing statutes, shall be construed as a continuation thereof, and not as new enactments, and a reference in a statute which has not been repealed to provisions of law which have been wholly or partially revised and re-enacted herein shall be construed as applying to such provisions as so incorporated in this act. The repeal of a law by this act shall not affect any act done, ratified or confirmed, or any right accrued or established, or any action, suit or proceeding commenced under any of the laws repealed before the repeal took effect, or any action, suit or proceeding pending at the time of the repeal for an offence committed, or for the recovery of a penalty or forfeiture incurred, under any of the laws repealed, but the proceedings shall, when necessary, conform to the provisions of this act. Any provision of this act by which a punishment, penalty or forfeiture is mitigated may be extended and applied to any judgment pronounced after said repeal.

Effect of
repeal.
210 Mass. 89.

Acts of 1909, Chapter 363.

An Act relative to the Rights of Action of Employees against Employers.

SECTION 1. If a defect in the ways, works or machinery of a person, partnership or corporation has been reported to the person whose duty it is to remedy said defect, or cause it to be remedied, or to report its existence, and such defect is not remedied within a reasonable time, and by reason of said defect an employee is injured, such employees shall not be held to have assumed the risk of such injury.

Rights of
action of
employees
against
employers.
See 1909, 514,
§§ 127, 134.

SECTION 2. This act shall take effect on the first day of January in the year nineteen hundred and ten. [Approved May 7, 1909.]

ACTS OF 1911, CHAPTER 751, PART I, §§ 1, 4.

An Act relative to Payments to Employees for Personal Injuries received in the Course of their Employment and to the Prevention of Such Injuries.

PART I.

MODIFICATION OF REMEDIES.

Damages for personal injury, etc.

SECTION 1. In an action to recover damages for personal injury sustained by an employee in the course of his employment, or for death resulting from personal injury so sustained, it shall not be a defense:

1. That the employee was negligent;
2. That the injury was caused by the negligence of a fellow employee;
3. That the employee had assumed the risk of the injury.

Law not to apply in certain cases.

SECTION 4. The provisions of sections one hundred and twenty-seven to one hundred and thirty-five, inclusive, and of one hundred and forty-one to one hundred and forty-three, inclusive, of chapter five hundred and fourteen of the acts of the year nineteen hundred and nine, and of any acts in amendment thereof, shall not apply to employees of a subscriber while this act is in effect.

Tools to be carried with trains.
1870, 372.
1871, 7.
1874, 372,
§ 131.
P. S. 112,
§ 171.
1882, 54, § 1.
R. L. 111,
§ 210.

SECTION 168. Every railroad corporation shall equip each of its trains, for use in case of accident, with two car replacers, two jack screws, two crowbars, one pinch bar, one claw bar, one spike hammer, two sharp axes, and ropes or chains suitable for hauling cars; and shall also equip each car of every passenger train which is owned or regularly used by it, including mail and baggage cars, with two sets of tools, consisting of an axe, a sledge hammer, a crowbar, handsaw and pail, which shall be maintained in good condition, and one set of which shall be kept upon the inside and the other upon the outside of every such car, in a convenient place and in a manner approved by the board of railroad commissioners; but one set shall be sufficient if so placed as to be accessible both from the inside and outside of such car. A corporation which violates the provisions of this section shall forfeit five hundred dollars.

Safeguards against fire.
1882, 54, § 3.
R. L. 111,
§ 211.
See 1906, 283.

SECTION 169. Every passenger, baggage, mail and express car, which is owned or regularly used on any railroad in this commonwealth, shall be provided with such safeguards against fire as the board of railroad commissioners in writing shall order. A corporation which violates the provisions of this section shall forfeit three hundred dollars for each offence.

Heating of cars regulated.
1887, 362.
1891, 249.
R. L. 111,
§ 212.
See 1911, 491.

SECTION 170. A passenger, mail or baggage car in this commonwealth shall not be heated by a stove or furnace which is kept inside the car or suspended therefrom unless it is temporarily necessary by reason of an accident or other emergency, and no method of heating such cars nor heater shall be used until it shall have been approved in writing by the board of railroad commissioners; but said board may from time to time grant such exemptions from the requirements of this section as may seem to it necessary or reasonable, and may grant permission to any railroad corporation to make such experiments in heating its passenger cars as said board determines is proper.

A corporation which violates the provisions of this section shall forfeit not more than five hundred dollars.

SECTION 171. A passenger car on a railroad shall not be lighted by naphtha, nor by an illuminating oil or fluid made in part of naphtha or which will ignite at a temperature of less than three hundred degrees Fahrenheit. A corporation which violates the provisions of this section shall forfeit not more than five hundred dollars.

Passenger cars not to be lighted by explosive oils. 1868, 286. 1872, 276. 1874, 372. § 132. P. S. 112, § 172. R. L. 111, § 213.

SECTION 172. Every passenger, baggage, mail and express car, which is owned or regularly used on any railroad in this commonwealth shall be provided at each end thereof with platform gates of a pattern approved by the board of railroad commissioners. A railroad corporation which hauls or uses or permits to be hauled or used on its railroad any car in violation of the provisions of this section shall, for each offence, forfeit one hundred dollars to the use of the commonwealth, and the attorney-general or the district attorney for the district in which such violation occurred shall bring an action therefor.

Platform gates. 1900, 223. R. L. 111, § 214. See 1911, 120.

Acts of 1911, Chapter 491.

An Act relative to the Furnishing of Drinking Water on Passenger Trains.

SECTION 1. Every railroad car, *excepting private cars, sleeping cars, dining cars, parlor cars, and the smoking, buffet and observation cars used in connection with the same*, while in use for the transportation of passengers, upon a train running thirty miles or more, shall be provided with a sufficient quantity of pure drinking water in such place or places in the car as will be convenient for the passengers, and with individual drinking cups which shall be accessible to the passengers. *Said cups shall be in a proper receptacle near the water tank, and said receptacle shall be so placed as to be easily seen and shall be plainly marked as follows: —*

Drinking water on passenger trains. Amended by 1912, 581.

DRINKING CUPS
FOR USE
ONLY IN THIS CAR
FREE

such words to occupy a space not less than two inches wide by three inches long, and to be in clear black letters on a white background. No charge shall be made for the water or for the drinking cups. The water and cups supplied shall be subject to the supervision and approval of the state board of health; and the said board shall enforce the provisions of this act.

SECTION 2. Violations of this act shall be punished by a fine of not less than twenty-five dollars for each trip made by a car used for transporting passengers and not provided with water and utensils for its distribution in accordance with the provisions hereof.

Penalty.

SECTION 3. This act shall take effect on the fifteenth day of June in the current year. [Approved May 27, 1911.]

Acts of 1912, Chapter 581.

An Act relative to the Furnishing of Drinking Water on Passenger Trains of Railroad Corporations.

Section one of chapter four hundred and ninety-one of the acts of the year nineteen hundred and eleven is hereby amended by inserting after the word "car", in the first line, the words: — *excepting private cars,*

1911, 491, amended.

sleeping cars, dining cars, parlor cars, and the smoking, buffet and observation cars used in connection with the same, — by inserting after the word “passengers”, in the sixth line, the words: — Said cups shall be in a proper receptacle near the water tank, and said receptacle shall be so placed as to be easily seen and shall be plainly marked as follows:—

DRINKING CUPS
FOR USE
ONLY IN THIS CAR
FREE

such words to occupy a space not less than two inches wide by three inches long, and to be in clear black letters on a white background, — and by striking out all after the word “act”, in the tenth line, so as to read as follows:— *Section 1. [For § 1 as amended, see above.]*

Testing of
locomotive
boilers.
1882, 73.
R. L. 111,
§ 218.
Repealed.
1909, 348.

[SECTION 173. The board of railroad commissioners may make and revise regulations for testing the boilers of locomotives, and shall communicate such revision to every person or corporation which operates a railroad in this commonwealth. The tests under such regulations shall, if possible, be made by the master mechanic of the corporation, firm or person which constructs, repairs or uses such boilers. A person or corporation using a locomotive on a railroad in this commonwealth, the boiler of which has not been tested in accordance with the provisions of this section, shall be punished by a fine of twenty dollars for every day during which such use continues, to the use of the commonwealth.]*

Section 173. The board of railroad commissioners may make and revise regulations for testing boilers of locomotives used by railroad corporations, by other corporations, and by persons, firms or associations upon any railroad or railway within the commonwealth, and every person, firm, association and corporation other than a railroad corporation so using a locomotive shall inform said board in writing on or before June thirtieth of each year of the number of locomotives so used by him or it, together with the length of track of such railroad or railway, its location

* On June 1, 1909, the board of railroad commissioners, under the provisions of Acts of 1909, chapter 348, issued the following regulations for the inspection and test of locomotive boilers:—
All boilers for locomotives, before going into service, must be subjected to a hydraulic pressure of at least twenty-five pounds per square inch in excess of the maximum working pressure allowed, and in no case shall it be less than one hundred and fifty pounds per square inch. The master mechanic or other proper representative of the company shall attend the test in person.

This test must be repeated at least once in every twelve months.

Stay-bolts must be examined after every hydraulic test, before engine goes into service, and special examination of stay-bolts must be made at least as often as once in every three months.

When these examinations are made, all the water must be drawn from the boiler, so that the vibration of the sheet may indicate any unsoundness of the stay-bolts, when it is struck with the hammer.

The tell-tale holes must be carefully examined and any found closed must be opened.

All stay-bolts, except flexible bolts and those eight inches or over in length, must be drilled from the outside one and one-fourth inches deep and three sixteenths of an inch in diameter.

In inspecting flexible stay-bolts with caps on the outside, caps must be removed at least once in every twelve months.

All stay-bolts found broken at the time of inspection shall be removed before engine is allowed to go into service.

Steam gauges and safety valves must be tested immediately before hydraulic pressure is applied and tested at least once in three months thereafter.

A record of all tests must be made, giving dates and any other information worthy of mention, and a report of the same for the preceding calendar year must be made annually to the Board of Railroad Commissioners on or before the first day of February.

These regulations supersede all previous regulations made by the Board of Railroad Commissioners.

and uses, and such other information as the board may require. The provisions of this section shall apply to railroads for private use authorized by section two hundred and fifty-one of Part II of this act. Tests under regulations made as aforesaid shall, if possible, be made by the master mechanic of the corporation, association, person or firm which constructs, repairs or uses the boiler of the locomotive, and the report of such tests shall be in form satisfactory to the board. A corporation, association, firm or person using a locomotive in this commonwealth the boiler of which has not been tested in accordance with the provisions of this section shall be punished by a fine of twenty dollars for every day after notice by the board during which such use continues.

Acts of 1909, Chapter 348.

An Act relative to the Testing of Boilers of Locomotives.

Chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby amended by striking out section one hundred and seventy-three of Part II and inserting in place thereof the following: —
Section 173. [For § 173 as amended, see above.]

SECTION 174. A railroad corporation which uses any vacuum brake shall provide and use on every locomotive equipped therewith a muffler or other appliance, approved in writing by the board of railroad commissioners, for deadening the noise incident to the operation of such brake; but any other appliance may be used upon any locomotive for the purpose of experiment only, for not more than thirty days, but not upon more than two locomotives of the same corporation at any one time. Every application to said board for approval of such appliances shall be in writing; and such approval may be revoked by said board by written notice to the corporation.

Mufflers with vacuum brakes.
 1879, 284, § 1, 3.
 P. S. 112, § 173, 174.
 R. L. 111, § 215.

SECTION 175. A railroad corporation which uses upon its locomotives a pop or other safety valve shall provide and use therewith a suitable and sufficient appliance for deadening the sound made by steam escaping therefrom, and, if it materially retards the escape of steam or increases the pressure upon the boiler, the corporation shall use an additional safety valve without such appliance, set at a higher point than the other but below the point at which explosion is likely to occur.

— with safety valves.
 1879, 284, § 2.
 P. S. 112, § 175.
 R. L. 111, § 216.

SECTION 176. A corporation which violates any provision of the two preceding sections shall forfeit not less than one hundred nor more than three hundred dollars for every locomotive used by it in violation thereof, and a further sum of five dollars for each day upon which such locomotive shall be run in violation thereof.

Penalties.
 1879, 284, § 4.
 P. S. 112, § 176.
 R. L. 111, § 217.

SECTION 177. Every railroad corporation shall furnish reasonable accommodations for the convenience and safety of passengers; and for every wilful neglect to provide the same shall forfeit not less than five nor more than twenty dollars.

Reasonable accommodations.
 1849, 191, § 2.
 G. S. 63, § 110.
 1874, 372, § 133.

P. S. 112, § 177.

R. L. 111, § 219.

See 1911, 120.

Uniform caps
and badges for
employees.
1874, 292; 372,
§ 134.
1876, 33.
P. S. 112,
§ 178.
R. L. 111,
§ 220.

SECTION 178. Every railroad corporation shall provide a uniform hat or cap and distinguishing badge, which shall be worn by all its employees whose duties relate immediately to the transportation of passengers or their baggage. A corporation which neglects to provide such uniform hat or cap and badge shall forfeit one hundred dollars for each week of such neglect; and if such an employee neglects to wear the same when on duty, the corporation which employs him shall for each case of such neglect forfeit twenty-five dollars; and no employee, unless wearing his uniform hat or cap and badge, shall be permitted to exercise any authority or to perform any of the duties of his office.

Color-blind-
ness, examina-
tion for.
1881, 194.
P. S. 112,
§ 179.
1883, 125.
R. L. 111,
§ 221.
See 1911, 539.

SECTION 179. A railroad corporation shall not employ any person or keep him in its employ in a position which requires the employee to distinguish form or color signals, unless he has been examined for color-blindness or other defective sight by a competent person employed by the corporation and has received a certificate that he is not disqualified for such position by color-blindness or other defective sight. A railroad corporation which violates the provisions of this section shall forfeit one hundred dollars.

Acts of 1911, Chapter 539.

An Act relative to the Employment of Locomotive Engineers and Conductors by Railroad Corporations.

Locomotive
engineers.

SECTION 1. No person shall act as a locomotive engineer unless he shall have been employed two years as a locomotive fireman or as an engineer's helper, or, prior to the passage of this act, shall have been employed as a locomotive engineer.

Conductors.

SECTION 2. No person shall act as a conductor on a railroad train unless he shall have been employed as a brakeman for two years, or, prior to the passage of this act, shall have been employed as a conductor on a railroad train.

SECTION 3. No person shall knowingly engage, promote, require, persuade, prevail upon, or cause any person to act in violation of either of the preceding sections.

SECTION 4. Nothing in this act shall be construed as applying to the operating of locomotive engines by engine hostlers in or around engine houses. In the event of the disability of an engineer or conductor on the road, railroad companies may employ persons without the qualifications prescribed by this act, but only for the purpose of reaching a terminal station.

SECTION 5. Any violation of the provisions of this act shall be punished by imprisonment for not more than one year, or by a fine of not more than five hundred dollars, or by both such imprisonment and fine, and each day's violation shall constitute a separate offence.

SECTION 6. This act shall apply to standard gauge railroads only.

SECTION 7. This act shall take effect upon its passage. [*Approved June 10, 1911.*]

Acts of 1909, Chapter 514, § 52.

Work on
Lord's day
unlawful,
unless.

SECTION 52. Except in cases of emergency or except at the request of the employee, it shall not be lawful for any person, partnership, association or corporation to require an employee engaged in any commercial occupation, or in the work of any industrial process, or in the work of

transportation or communication, to do on the Lord's day the usual work of his occupation, unless such employee is allowed during the six days next ensuing twenty-four consecutive hours without labor. But the provisions of this section shall not be construed as authorizing any work on the Lord's day not now authorized by law; nor as applying to farm or personal service, to druggists, to watchmen, to superintendents or managers, to janitors, or to persons engaged in the transportation, sale or delivery of milk, food or newspapers. Whoever violates the provisions of this section shall be punished by a fine of not more than fifty dollars for each offence.

Revised Laws, Chapter 106, § 15.

SECTION 15. A corporation which is engaged in carrying passengers or in transporting freight for hire shall not require or receive from a person who is employed or about to be employed by it a bond or other security, either with or without surety, to indemnify such corporation against loss or damage to other persons or to property resulting from the act or neglect of such person, except a bond to account for money or other property of such corporation. A corporation or a person in its behalf who violates the provisions of this section shall be punished by a fine of not more than fifty dollars for the first offence and of not more than one hundred dollars for each subsequent offence.

Railroads, etc.,
not to require
certain bonds.
1900, 282.

Acts of 1909, Chapter 514, §§ 25, 26.

SECTION 25. No railroad, street railway, electric light, gas, telegraph, telephone, water or steamboat company shall appoint, promote, reinstate, suspend or discharge any person employed or seeking employment by any such company at the request of the governor, lieutenant governor, or any member or member elect of the council or of the general court, or candidate therefor, justice of the supreme judicial court, justice of the superior court, judge of probate, justice of a police, district or municipal court, district attorney, member or member elect of a board of county commissioners, or candidate for county commissioner, member or member elect of a board of aldermen, or selectmen, or city council, or any executive, administrative or judicial officer, clerk or employee of any branch of the government of the commonwealth or of any county, city or town; nor shall any such public officer or body, or any member or member elect thereof or candidate therefor, directly or indirectly advocate, oppose, or otherwise interfere in, or make any request, recommendation, endorsement, requirement or certificate relative to, and the same, if made, shall not be required as a condition precedent to, or be in any way regarded or permitted to influence or control, the appointment, promotion, reinstatement or retention of any person employed or seeking employment by any such corporation, and no such person shall solicit, obtain, exhibit, or otherwise make use of any such official request, recommendation, certificate or endorsement in connection with any existing or desired employment by a public service corporation. Any person or corporation violating the provisions of this section shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars for each offence.

Employment
by public
service cor-
porations re-
stricted.
1903, 320,
§§ 1, 3.

SECTION 26. The offices of probation officer, notary public and justice of the peace, prison officer, agent of the prison commissioners and agent of the state board of charity shall not be considered public offices within the meaning of the preceding section.

Public offices
defined.
1903, 320, § 2.
1908, 228.

WEEKLY PAYMENT OF WAGES.

Acts of 1909, chapter 514, § 112, etc., as amended by Acts of 1911, Chapter 208.

An Act relative to the Weekly Payment of Wages by Express Companies.

1909, 514,
§ 112, etc.,
amended.

Weekly pay-
ment of
wages, etc.
1879, 128.
P. S. 28, § 12.
1886, 87,
§§ 1, 2.
1887, 399, § 1.
1891, 239, § 1.
1894, 508,
§§ 51, 65.
1895, 438.
1896, 241, 334.
1898, 481.
1899, 247.
1900, 470.
163 Mass. 589.
170 Mass. 140.
172 Mass. 230.
See 1911, 249.
206 Mass. 423.

Section one hundred and twelve of chapter five hundred and fourteen of the acts of the year nineteen hundred and nine, as amended by chapter three hundred and fifty of the acts of the year nineteen hundred and ten, is hereby further amended by striking out the word "incorporated", in the third line, so as to read as follows:— *Section 112.* Every manufacturing, mining, or quarrying, mercantile, railroad, street railway, telegraph or telephone corporation, every express company or water company, and every contractor, person or partnership engaged in any manufacturing business, in any of the building trades, in quarries or mines, upon public works or in the construction or repair of railroads, street railways, roads, bridges or sewers, or of gas, water or electric light works, pipes or lines, shall pay weekly each employee engaged in his or its business the wages earned by him to within six days of the date of said payment, but any employee leaving his or her employment, shall be paid in full on the following regular pay day; and any employee discharged from such employment shall be paid in full on the day of his discharge, or in the city of Boston as soon as the provisions of law requiring pay rolls, bills and accounts to be certified shall have been complied with; and the commonwealth, its officers, boards and commissions shall so pay every mechanic, workman and laborer who is employed by it or them, and every person employed by it or them in any penal or charitable institution, and every county and city shall so pay every employee who is engaged in its business the wages or salary earned by him, unless such mechanic, workman, laborer or employee requests in writing to be paid in a different manner; and every town shall so pay each employee in its business if so required by him; but an employee who is absent from his regular place of labor at a time fixed for payment shall be paid thereafter on demand. The provisions of this section shall not apply to an employee of a co-operative corporation or association if he is a stockholder therein unless he requests such corporation to pay him weekly. The board of railroad commissioners, after a hearing, may exempt any railroad corporation from paying weekly any of its employees if it appears to the board that such employees prefer less frequent payments, and that their interests and the interests of the public will not suffer thereby. No corporation, contractor, person or partnership shall by a special contract with an employee or by any other means exempt himself or itself from the provisions of this and the following section. Whoever violates the provisions of this section shall be punished by a fine of not less than ten nor more than fifty dollars. [Approved March 28, 1911.

Penalty.

Acts of 1909, Chapter 514, § 113.

Chief of dis-
trict police to
prosecute vio-
lations of
preceding
section.
1886, 87, § 2-4.
1887, 399, § 2.
1891, 239.
1894, 508,
§§ 52-54.
1895, 438.
1896, 334.

SECTION 113. The chief of the district police or an inspector of factories and public buildings may make a complaint against any person for a violation of the provisions of the preceding section. [1909, 514, § 112, now 1911, 208.] Complaints for such violation shall be made within thirty days after the date thereof, and, on the trial, no defence for failure to pay as required, other than the attachment of such wages by the trustee process or a valid assignment thereof or a valid set-off against the same, or the absence of the employee from his regular place

of labor at the time of payment, or an actual tender to such employee at the time of payment of the wages so earned by him, shall be valid. The defendant shall not set up as a defence a payment of wages after the bringing of the complaint. An assignment of future wages which are payable weekly under the provisions of this act shall not be valid if made to the person from whom such wages are to become due or to any person on his behalf or if made or procured to be made to another person for the purpose of relieving the employer from the obligation to pay weekly. The word "person" in this section shall include the corporations, contractors, persons and partnerships described in the preceding section.

1898, 481.
1899, 247.
206 Mass. 423.

Revised Laws, Chapter 176, § 1.

SECTION 1. A person qualified to vote for representatives to the general court shall be liable to serve as a juror, except that the following persons shall be exempt:

The governor; lieutenant-governor; members of the council; secretary of the commonwealth; members and officers of the senate and house of representatives during the session of the general court; judges and justices of a court, except justices of the peace; county and associate commissioners; clerks of courts and assistant clerks and all regularly appointed officers of the courts of the United States and of this commonwealth; registers of probate and insolvency; registers of deeds; sheriffs and their deputies; constables; marshals of the United States and their deputies, and all other officers of the United States; attorneys at law; settled ministers of the gospel; officers of colleges; preceptors and teachers of incorporated academies; registered practising physicians and surgeons; cashiers of incorporated banks; constant ferrymen; persons who are more than sixty-five years old; members of the volunteer militia; members of the ancient and honorable artillery company; superintendents, officers and assistants employed in or about a state hospital, insane hospital, jail, house of correction, state industrial school or state prison; keepers of light houses; conductors and engine drivers of railroad trains; teachers in public schools; enginemen and members of the fire department of the city of Boston, and of other cities and towns in which such exemption has been made by vote of the city council or the inhabitants of the town, respectively.

Qualifications and exemptions.
C. L. 55, § 2.
C. L. 148, § 4.
C. L. 352.
1784, 7, §§ 2, 9.
1785, 42, § 4.
1802, 92, § 1.
1807, 140, § 1.
1808, 25.
1812, 141, § 2.
R. S. 18, § 17;
95, §§ 1-3.
1838, 21.
1849, 218, § 8.
1851, 204.
1858, 93, § 2.
G. S. 132,
§§ 1, 2.
1864, 215.
1874, 320, § 17.
P. S. 170,
§§ 1, 2.
1896, 427.
9 Mass. 107.
20 Pick. 1.
121 Mass. 69.
143 Mass. 130.
163 Mass. 453.
186 Mass. 231.

Acts of 1908, Chapter 604, § 3.

SECTION 3. In addition to the persons exempted by the laws of the United States from enrolment in the militia, the following persons shall also be absolutely exempt: justices and clerks of courts of record; judges and registers of probate and insolvency; registers of deeds, and sheriffs; officers who hold or have held commissions in the regular or volunteer army or navy of the United States; officers who have held, for a period of five years, commissions in the militia of this or of any other state of the United States, or who have been superseded and discharged, or who have held commissions in any organization of the Massachusetts volunteer militia at the time of its disbandment; enlisted men who have served honorably in the volunteer militia for a period of nine years; ministers of the gospel; practising physicians; superintendents, officers and assistants employed in or about any of the state hospitals, state almshouses, state prisons, jails or houses of correction; keepers of lighthouses; conductors and engine drivers of railroad trains; seamen actually employed on board of any vessel, or who have been so employed within three months next preceding the time of enrolment.

Exemptions.
U. S. Rev. Sts.,
§ 1629.
P. S. 14, § 2.
1887, 411, § 2.
1893, 367, § 2.
4 Mass. 239.
13 Mass. 316.
14 Mass. 394.
17 Mass. 49.
1 Pick. 261.
2 Pick. 597.
23 Pick. 208.

Further appliances. 1882, 54, § 4. R. L. 111, § 222. See 1908, 495.

SECTION 180. The board of railroad commissioners may require a railroad corporation to equip its cars with such other appliances as, in the judgment of said board, are necessary for the further protection of life in all passenger trains used in this commonwealth.

Fares, Tolls, Charges, etc.

Rates of fare, how established and revised. R. S. 39, § 83. G. S. 63, § 112. 1870, 325, § 1. 1874, 372, § 179. P. S. 112, § 180. R. L. 111, § 225. 12 Gray, 180. 160 Mass. 82. 170 Mass. 205. 210 Mass. 163, 555. See 1907, 287; 1908, 504.

SECTION 181. A railroad corporation may establish for its sole benefit fares, tolls and charges upon all passengers and property conveyed or transported on its railroad, at such rates as may be determined by its directors, and may from time to time by its directors regulate the use of its railroad; but such fares, tolls and charges, and such regulations, shall be subject to revision and alteration by the general court, or by such officers or persons as it may appoint for the purpose, anything in the charter of the railroad corporation to the contrary notwithstanding.

Acts of 1913, Chapter 784, §§ 17, 19, 20-22.

Charges for service regulated.

SECTION 17. All charges made, demanded or received by any common carrier subject to the supervision of the commission for any service rendered or performed, or to be rendered or performed by it or in connection therewith in the conduct of its common carrier business, or made, demanded or received by any two or more common carriers joining in rendering or performing any service shall be just and reasonable, and every such common carrier and any two or more such common carriers joining in rendering or performing any service shall be entitled to make, demand and receive just and reasonable charges for any such service, and every unjust or unreasonable charge is hereby prohibited and declared unlawful; but charges heretofore established and set out in any schedule filed as hereinafter provided shall be deemed prima facie lawful until changed or modified by the commission under the powers conferred upon the commission by the provisions of this act, but this provision shall not give to such rates any greater weight as evidence of the reasonableness of other rates than they would otherwise have.

Fixing of rates, charges, etc., subject to commission's approval.

SECTION 19. Subject to the powers of the commission to regulate and prescribe rates and charges, a common carrier may make commodity, transit, or other classes of rates. The furnishing by any common carrier of any service at the rates and upon the terms and conditions provided for in any existing contract executed prior to the first day of July, nineteen hundred and thirteen, shall not constitute a discrimination unless the commission shall so determine. The commission shall not be prevented from taking such action as it may deem proper by any commitment or agreement of a common carrier entered into by reason of any requirement or recommendation of any board or public officers acting under delegated authority from the general court prior to the enactment hereof. Unless the commission shall determine otherwise common carriers shall be permitted, whether required to do so by law or not, to issue mileage, workingmen's, excursion, school, or commutation passenger tickets, or reduced rate tickets for the transportation of children under twelve years of age, or of pupils attending schools, or joint interchangeable mileage tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of five hundred miles or more. All season tickets, before issuance, shall be subject to the approval of the commission as to the form thereof and the conditions named therein.

Issue of mileage, and other tickets.

Season tickets.

SECTION 20. Every common carrier shall file with the commission and shall plainly print and keep open to public inspection, schedules showing all rates, joint rates, fares, telephone rentals, tolls, classifications and charges for any service, of every kind rendered or furnished, or to be rendered or furnished, by it within the commonwealth, and all conditions and limitations, rules and regulations and forms of contracts or agreements in any manner affecting the same, in such places, within such time, and in such form, and with such detail as the commission may order. In the case of common carriers the forms prescribed for such schedules and the requirements relative to the filing and publication thereof shall conform, as nearly as may be, to the forms prescribed by and the similar requirements of the interstate commerce commission. No common carrier shall, except as otherwise provided in this act, charge, demand, exact, receive, or collect a different rate, joint rate, fare, telephone rental, toll or charge for any service rendered or furnished by it, or to be rendered or furnished, from that applicable to such service as specified in its schedule filed with the commission and in effect at the time. Nor shall any common carrier refund, or remit directly or indirectly, any rate, joint rate, fare, telephone rental, toll or charge so specified, or any part thereof, nor extend to any person or corporation any rule, regulation, privilege or facility except such as are specified in the said schedule and regularly and uniformly extended to all persons and corporations under like circumstances for the like, or substantially similar, service. Unless the commission otherwise orders, no change shall be made in any rate, joint rate, fare, telephone rental, toll, classification or charge, or in any rule or regulation or form of contract or agreement in any manner affecting the same as shown upon the schedules filed in accordance with this act, except after thirty days' notice to the commission, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when such changes shall take effect, and such notice to the public as the commission shall order, to be given prior to the time, fixed in such notice to the commission, for the changes to take effect. The commission, for good cause shown may allow changes without requiring the thirty days' notice, under such conditions as it may prescribe, and may suspend the taking effect of changes under the circumstances and in the manner hereinafter provided. At the time when any changes take effect, they shall be plainly indicated upon existing schedules, or new schedules shall be printed and filed, as the commission may order. Nothing in this act shall be construed to prevent any telegraph or telephone corporation from continuing to furnish the use of its lines, equipment or service under any contract or contracts in force at the date when this act takes effect, or upon the taking effect of any schedule or schedules of rates subsequently filed with the commission, as hereinafter provided, at the rate or rates fixed in such contract or contracts: *provided, however*, that when any such contract or contracts are or become terminable by notice, the commission shall have power in its discretion to direct by order that such contract or contracts shall be terminated by the telegraph or telephone corporation party thereto, and thereupon such contract or contracts shall be terminated by such telegraph or telephone corporation as and when directed by such order.

Schedules of rates, etc., to be filed, etc.

Forms for schedules.

Charges, etc., regulated.

Refunds, etc.

Thirty days' notice of change in rates, etc.

Waiver of notice.

Certain existing contracts not affected.

Proviso.

SECTION 21. Whenever the commission receives notice of any change or changes proposed to be made in any schedule filed under the provisions of this act, it shall have power, either upon complaint or upon its own motion, and after notice, to hold a public hearing and make investigation as to the propriety of such proposed change or changes. Pending any such investigation and the decision thereon, the commission shall have

Public hearings on proposed changes in rates, etc.

Decision on
new rates, etc.

power, by any order served upon the common carrier affected, to suspend the taking effect of such change or changes, but not for a longer period than six months beyond the time when such change or changes would otherwise take effect. After such hearing and investigation, the commission may make such order in reference to any new rate, joint rate, fare, telephone rental, toll, classification, charge, rule, regulation or form of contract or agreement proposed, as would be proper in a proceeding initiated after the same has taken effect. At any such hearing involving any proposed increase in any rate, joint rate, fare, telephone rental, toll or charge, the burden of proof to show that such increase is necessary in order to obtain a reasonable compensation for the service rendered shall be upon the common carrier. If at a hearing involving any proposed decrease in any rate, joint rate, fare, telephone rental, toll or charge demanded by any common carrier, it shall appear to the commission that the said rate, joint rate, fare, telephone rental, toll or charge is insufficient to yield reasonable compensation for the service rendered, the commission shall have power to determine what will be the just and reasonable rate or rates, fare or fares, telephone rental or rentals, toll or tolls, charge or charges, to be thereafter observed in such case as the minimum to be charged, and to make an order that the common carrier complained of shall not thereafter demand, charge or collect any rate, fare, telephone rental, toll, or charge lower than the minimum so prescribed without first obtaining the consent of the commission, not to be given without a public hearing.

Hearings upon
rates, fares,
etc.

SECTION 22. Whenever the commission shall be of opinion, after a hearing had upon its own motion or upon complaint, that the rates, fares or charges or any of them demanded, exacted, charged or collected by any common carrier now or hereafter subject to its jurisdiction, for any services to be performed within the commonwealth, or the regulations or practices of such common carrier affecting such rates, are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law, or that the rates, fares or charges or any of them chargeable by any such common carrier are insufficient to yield reasonable compensation for the service rendered and are unjust and unreasonable, the commission shall determine the just and reasonable rates, fares and charges to be charged for the service to be performed, and shall fix the same by order to be served upon every common carrier by whom such rates, fares and charges or any of them are thereafter to be observed. It shall be the duty of every such common carrier to observe and obey every requirement of every such order so served upon it, and to do everything necessary or proper in order to secure absolute compliance with and observance of every such order by all its officers, agents and employees. The commission may, after investigation, authorize a common carrier in special cases to charge less for longer than for shorter distances for the transportation of passengers or property, whenever in the opinion of the commission such authorization is consistent with the public interests, and the commission may from time to time modify or revoke such authorization.

Orders of com-
mission to be
obeyed, etc.

Extra fares
regulated.
1883, 32.
1900, 154.
R. L. 111,
§ 226.

SECTION 182. A railroad corporation shall not demand or receive for any single ticket bought or fare paid on a train or elsewhere than at its ticket offices more than ten cents in excess of the tariff rates charged at its ticket offices. When such excess is received, the conductor or other person receiving it shall give to the passenger a printed certificate which shall entitle

him to receive the excess so paid at any station of the corporation in exchange for such certificate. A railroad corporation which violates any provision of this section shall be punished by a fine of not less than ten nor more than fifty dollars.

[SECTION 183. Every railroad corporation which has a terminus in Boston, except the Boston, Revere Beach and Lynn Railroad Company, shall sell a commutation ticket good for not more than twenty-five trips between Boston and a station in the suburban district, so-called, which is named therein, at the lowest rate for each trip which was charged between said points on the first day of July in the year nineteen hundred, except the rates charged for season tickets and for tickets on workmen's trains.]

Commutation tickets.
1900, 395.
R. L. 111,
§ 227.
Repealed,
1908, 649, § 3.

Acts of 1908, Chapter 649.

An Act relative to the Issuing of Mileage and Commutation Tickets by Railroad Corporations.

SECTION 1. Every railroad corporation issuing mileage tickets shall, upon presentation of such a ticket by a passenger, detach therefrom one coupon and no more for each mile and fraction thereof actually travelled: *provided, however,* that for distances less than three miles three coupons may so be detached. Distances to or from the station known as Back Bay on the New York, New Haven and Hartford railroad, and the stations known as Trinity Place and Huntington Avenue on the Boston and Albany railroad, shall be computed as if to or from the Boston terminal station.

Mileage tickets, detachment of coupons.

Proviso.

SECTION 2. Every railroad corporation which has a terminus in Boston, except the Boston, Revere Beach and Lynn Railroad Company, shall sell a commutation ticket good for not more than twelve rides between Boston and each station on its lines within fifteen miles of its terminal station in Boston, at a price not exceeding the average rate for each trip which was charged between said points for the twenty-five-ride commutation tickets in use on the first day of January in the year nineteen hundred and eight, excepting that the minimum fare shall be five cents. The said tickets, before issuance, shall be subject to approval by the board of railroad commissioners both as to the rate of fare and the conditions named therein. So far as is practicable, the rates of fare on all roads for like distances from their terminal stations shall be equal. In any city or town where the said twelve-ride ticket shall exceed in price the price now charged per trip for the twenty-five-ride ticket, then thereafter in the said city or town the said railroad companies shall continue to have for sale a twenty-five-ride ticket at the existing price.

Commutation tickets.

SECTION 3. Section one hundred and eighty-three of Part II, of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby repealed. [Approved June 13, 1908.]

1906, 463,
Part II, § 183,
repealed.

Acts of 1911, Chapter 508.

An Act relative to Season Tickets issued by Railroad Corporations.

SECTION 1. All railroads operating in the commonwealth of Massachusetts and issuing season tickets between points within the commonwealth shall, at the request and on the presentation of a season ticket by the holder thereof, place the same on deposit for not less than one week and reissue the ticket at the request of the owner, extending the period for

Season tickets issued by railroad corporations may be extended.

Proviso. which the ticket was issued by a number of days equal to the number during which it remained on deposit: *provided, however*, that no ticket shall be deposited more frequently than at the rate of once in three months; and a holder shall have such further privileges as the railroad commissioners shall approve.

SECTION 2. All railroads operating in the commonwealth of Massachusetts and issuing season tickets between points within the commonwealth shall, at the request of a holder of a season ticket, reimburse said holder for the cost of the fare or fares paid by said holder between the stations named on the ticket whenever said holder fails to present the season ticket for fare. The holder of a season ticket in order to be entitled to reimbursement must, within one week, present to the proper officer of the railroad company the certificate given at the time of paying the fare together with the coupon from the season ticket.

Time of taking effect.

SECTION 3. This act shall take effect upon its passage but shall not apply to any tickets heretofore issued.

(The foregoing was laid before the Governor on the twenty-fourth day of May, 1911, and after five days it had "the force of a law", as prescribed by the Constitution, as it was not returned by him with his objections thereto within that time.)

Acts of 1913, Chapter 179.

An Act relative to Bonds given by Certain Banks, Associations and Persons.

1906, 408, § 1, amended.

Section one of chapter four hundred and eight of the acts of the year nineteen hundred and six, as amended by section one of chapter three hundred and seventy-seven of the acts of the year nineteen hundred and seven, is hereby further amended by inserting after the word "country", in the nineteenth line, the words:—and in the event of the insolvency or bankruptcy of the principal upon the payment of the full amount of such bond to the assignee, receiver or trustee of the principal, as the case may require, for the benefit of such persons as shall deliver money to said principal for safe keeping or for the purpose of transmitting the same to a foreign country, — so as to read as follows:— *Section 1.* All persons, partnerships, associations or corporations now or hereafter engaged in the selling of steamship or railroad tickets for transportation to or from foreign countries, or in the supplying of laborers, that, in conjunction with said business, carry on the business of receiving deposits of money for safe keeping, or for the purpose of transmitting the same, or equivalents thereof, to foreign countries, or for any other purpose, shall, before entering into or continuing in the said business, except as hereinafter provided, make, execute and deliver a bond to the treasurer and receiver general in such sum as the bank commissioner may deem necessary to cover money or deposits received for the aforesaid purposes by such persons, partnerships, associations or corporations, the bond to be conditioned upon the faithful holding and repayment of the money deposited as aforesaid, and upon the faithful holding and transmission of any money, or equivalent thereof, which shall be delivered to them for transmission to a foreign country, and in the event of the insolvency or bankruptcy of the principal upon the payment of the full amount of such bond to the assignee, receiver or trustee of the principal, as the case may require, for the benefit of such persons as shall deliver money to said principal for safe keeping or for the purpose of transmitting the same to a foreign country. If any person, partnership or member of a partnership, or any association or corporation engaged or financially interested in the selling of tickets or supplying of laborers as aforesaid is also engaged or financially interested in the business of receiving deposits of money as aforesaid, or if any person,

partnership or member of a partnership, or any association or corporation engaged or financially interested in the business of receiving deposits of money as aforesaid is also engaged or financially interested in the selling of tickets or supplying of laborers as aforesaid, such person, partnership, member of a partnership, association or corporation, shall be held to be subject to the provisions of this section, under whatever name or by whatever persons the said business of selling tickets or supplying laborers or the said business of receiving deposits is carried on. [Approved February 26, 1913.*

Revised Laws, Chapter 209, § 2.

SECTION 2. Whoever forges or procures to be forged, or assists in forging, the seal of the court of land registration, or, without lawful authority, stamps or procures to be stamped, or assists in stamping, any document with such forged seal or with the genuine seal of said court, shall be punished as provided in the preceding section. Whoever forges or procures to be forged, or assists in forging, the stamp of any railroad company or of any railroad ticket agent, or stamps or procures to be stamped, or assists in stamping, any railroad ticket or railroad mileage book with such forged stamp, or with a genuine stamp of any railroad company or railroad ticket agent without being duly authorized thereto shall be punished by imprisonment in the state prison for not more than three years or in jail for not more than two years, or by a fine of not more than five hundred dollars.

Forgery of stamp or seal. 1898, 562, § 114. 1901, 371, § 3. 188 Mass. 91.

Transportation of Passengers.

SECTION 184. A railroad corporation may make contracts for the conveyance of passengers upon designated trains for a specific distance at fixed times, at such reduced rates of fare as the parties may agree upon. Tickets may be issued for such passengers, upon which shall be plainly printed the terms upon which they may be used. Such tickets shall not be transferable without the consent of the corporation, nor shall they entitle the holder to ride upon a train which is not therein designated.

Conveyance of passengers at reduced rates. 1871, 143. 1874, 372, § 135. P. S. 112, § 181. R. L. 111, § 228. See 1911, 508.

SECTION 185. A railroad corporation which owns or operates a railroad of standard gauge in this commonwealth shall check and transport between stations within the limits of this commonwealth, as baggage, and subject to the same charges, terms and liabilities as other baggage, one bicycle for each passenger who pays by a mileage book, by a ticket other than a season ticket, or in cash, the established fare, if it is not less than ten cents, exclusive of rebate. The weight of the bicycle shall be included in determining the total weight of the baggage to be transported for such passenger. Such corporation shall not require such bicycle to be crated, covered or otherwise protected.

Bicycles as baggage. 1900, 318. R. L. 111, § 229.

SECTION 186. Every railroad corporation shall, upon request, give checks to passengers for their baggage when delivered for transportation, and shall re-deliver the baggage to the passengers upon the surrender of such checks. A corporation which violates the provisions of this section shall forfeit ten dollars for each offence.

Baggage checks. 1854, 23. G. S. 63, § 111. 1874, 372, § 136. P. S. 112, § 182. R. L. 111, § 230. 15 Gray, 447. 7 Allen, 329.

* For further provisions with reference to this subject, see 1907, 377, §§ 2-7.

Revised Laws, Chapter 208, § 126.

Injury, etc., to
baggage by
hackman, etc.
1869, 307.
P. S. 203,
§ 112.

SECTION 126. A baggage master, express agent, stage driver, hackman or other person, whose duty it is to handle, remove or take care of the baggage of passengers, who wilfully or recklessly destroys or injures a trunk, valise, box, package or parcel, while loading, transporting, unloading, delivering or storing the same, shall be punished by a fine of not more than fifty dollars.

Acts of 1907, Chapter 287.

An Act relative to Charges for Storage of Baggage by Railroad Corporations.

Storage of
baggage,
charges.
Amended,
1908, 504.

SECTION 1. No charge shall be made by railroad corporations for the care or storage of baggage left at or arriving in railroad stations upon Friday, for the period of time between Friday and *twelve o'clock noon* of the following Monday.

SECTION 2. This act shall take effect upon its passage. [*Approved April 11, 1907.*]

Acts of 1908, Chapter 504.

An Act relative to the Charges for Storage of Baggage by Railroad Corporations.

1907, 287, § 1,
amended.

SECTION 1. Section one of chapter two hundred and eighty-seven of the acts of the year nineteen hundred and seven is hereby amended by striking out the words "the forenoon", in the fourth line, and inserting in place thereof the words:— *twelve o'clock noon*,— so as to read as follows:— *Section 1.* No charge shall be made by railroad corporations for the care or storage of baggage left at or arriving in railroad stations upon Friday, for the period of time between Friday and *twelve o'clock noon* of the following Monday.

Charge for
storage of
baggage.

SECTION 2. This act shall take effect upon its passage. [*Approved May 7, 1908.*]

Revised Laws, Chapter 95, §§ 1-4.

Publication of
unclaimed
effects of
passengers.
1851, 147, § 1.
G. S. 80, § 1.
P. S. 96, § 1.
6 Allen, 253.

SECTION 1. Railroad corporations and the proprietors of steamboats engaged in the transportation of passengers shall semi-annually, on the first Monday of January and July, publish, in one newspaper at least in every county of this commonwealth in which such corporations or proprietors have a passenger station or office, a descriptive list of all trunks, bags, valises, parcels and passengers' effects which have been left and then remain unclaimed at any passenger station or office, or in the possession of such corporations or proprietors or their agents, and the list shall indicate all such specific marks as may serve to identify the same.

Sale of
unclaimed
articles.
1851, 147, § 2.
G. S. 80, § 2.
P. S. 96, § 2.

SECTION 2. If at the expiration of six months after such advertisement any of the articles so advertised remain unclaimed, said corporations or proprietors having possession thereof shall give notice to the mayor and aldermen of the city or selectmen of the town in which the articles may be, who shall cause them to be examined, and may order them to be sold by public auction upon publication of notice of the time and place of sale as aforesaid, or may order them to be again advertised and to remain another six months before being sold.

Proceeds to be
paid to com-
monwealth.
1851, 147, § 3.
G. S. 80, § 3.
P. S. 96, § 3.

SECTION 3. The proceeds of all articles thus sold, after deducting costs of storage, advertising and other expenses due to such corporations or proprietors, and the costs of said examination and sale, shall be paid over to the treasurer and receiver general for the use of the commonwealth.

SECTION 4. If such corporations or proprietors neglect or omit so to advertise and cause any such effects to be examined, they shall be liable for all damages caused thereby, and shall also forfeit one hundred dollars for each case of neglect or omission.

Penalty for neglect to advertise, etc.
1851, 147, § 4.
G. S. 80, § 4.
P. S. 96, § 4.

SECTION 187. Every railroad corporation which has a terminus in Boston shall, upon the application of two hundred or more persons therefor, furnish on each week day a morning train in and an evening train out for distances not exceeding fifteen miles, or suitable cars attached to other trains, and reaching and leaving Boston at about six o'clock in the forenoon and afternoon, or at such hours as may be fixed by the board of railroad commissioners; and for such trains, shall furnish season tickets good once a day each way for six days in the week, at a rate not exceeding, for yearly tickets, three dollars a mile and for quarterly tickets, one dollar a mile.

Cheap morning and evening trains.
1872, 348.
P. S. 112, § 183.
R. L. 111, § 231.

SECTION 188. Every railroad corporation which has a terminus in Boston shall furnish such number of workingmen's trains, not less than two each way, as the board of railroad commissioners, upon a petition for such trains filed with it, shall in each case order. Such trains shall arrive at Boston between six and half past seven o'clock in the morning and leave Boston between the same hours in the evening and special cars may be provided therefor. Season tickets, good once a day each way for six days in the week, shall be furnished for such trains at a rate not exceeding, for yearly tickets, three dollars a mile, and for quarterly tickets, one dollar a mile. Trip tickets now issued shall be good on the two trains authorized by this section, and shall not be withdrawn nor the rate therefor be increased without the consent of the board of railroad commissioners.

Workingmen's trains.
1900, 298.
R. L. 111, § 232.

SECTION 189. Every railroad corporation shall sell to an express messenger or to a person who conducts a local express business, as provided in section one hundred and ninety-seven, in its trains or cars within this commonwealth, a season ticket for his personal transportation, at a price not exceeding that at which similar tickets are sold to passengers, upon receiving from him a release of all right, to whomsoever accruing, to damages or compensation for death or for any personal injury received by him while riding on such ticket. The supreme judicial court or the superior court shall have jurisdiction to enforce the provisions of this section by injunction, mandamus or other suitable process.

Season tickets for express messengers.
1894, 469.
§§ 2, 5.
R. L. 111, § 233.
See R. L. 70, § 8.
201 Mass. 579.

SECTION 190. Any person who, being governor, lieutenant governor, member of the council, member or member-elect of the general court, justice of the supreme judicial court, justice of the superior court, judge of probate, justice of a police, district or municipal court or a county commissioner, who requests, for himself or another, accepts or uses any free pass upon a railroad, or any ticket which entitles him to transportation upon a railroad, for which he has paid a less price than is demanded of the public generally, and an officer, agent or em-

Free passes to state officers forbidden.
1892, 59.
§§ 1-3.
R. L. 111, § 234.

ployee of a railroad corporation who issues, delivers or offers to any person hereinbefore mentioned or to or for any other person at the request, solicitation or procurement of any such person a free pass or any ticket which entitles him to transportation at a less rate of fare than is demanded of the public generally, shall be punished by a fine of not less than one hundred nor more than one thousand dollars.

Acts of 1913, Chapter 784, § 18.

Free service,
etc., prohibited.
Exceptions.
See *Interstate
Commerce law
as amended
June 18, 1910,
§ 1, cl. 5.*

SECTION 18. No common carrier shall, directly or indirectly, issue or give any free service, free tickets, free pass or free transportation for passengers or property between points within this commonwealth; but nothing in this act shall be held to prohibit any railroad corporation from furnishing free passes or free transportation to officers or employees of the general court; nor to prohibit any railroad corporation or street railway company from giving free or reduced rate service to policemen, letter carriers and firemen while in uniform or engaged in the discharge of their duties; nor to prohibit any common carrier from giving free or reduced rate service to its employees, or in cases of public emergency, or for such charitable purposes as may be approved by the commission; nor to prohibit any telephone or telegraph company, unless the commission shall otherwise order, from giving service at reduced rates to the commonwealth or to any city or town; nor shall this act be held to prohibit the commissioners, their experts, inspectors and counsel from being transported over the railroads and the railways of this commonwealth free of charge while engaged in the performance of their duties; nor shall this act be held to prohibit the giving by any such common carrier of free or reduced rate service to the classes defined and provided for in the act of congress entitled "An act to regulate commerce" and acts amendatory thereof.

Acts of 1912, Chapter 488.

An Act to authorize Railroad Corporations to issue Passes to Former Employees who have been injured.

Issue of passes
to injured
employees of
railroad cor-
porations, etc.

SECTION 1. Railroad corporations are hereby authorized to issue passes for free transportation to former employees who have been injured in the service of the corporation issuing the pass. The pass shall state the nature of the injury, shall not be transferable, and shall be forfeited if used, or attempted to be used, in violation of the conditions of the pass, or if it was obtained by misrepresentation.

SECTION 2. This act shall take effect upon its passage. [*Approved April 13, 1912.*]

Women, etc.,
in smoking
cars.
1888, 176.
R. L. 111,
§ 235.

SECTION 191. A railroad corporation which does business in this commonwealth shall not require women or children to ride in smoking cars. For a violation of the provisions of this section the corporation, or any officer or employee thereof, shall be punished by a fine of not less than ten nor more than fifty dollars for each offence.

Revised Laws, Chapter 212, § 89.

Color or race
discrimina-
tion.
1865, 277.
1866, 252.

SECTION 89. Whoever makes any distinction, discrimination or restriction on account of color or race or, except for good cause, applicable alike to all persons of every color and race, relative to the admission of

any person to, or his treatment in, a theatre, skating rink or other public place of amusement, licensed or unlicensed, or in a public conveyance or public meeting, or in an inn, barber shop or other public place kept for hire, gain or reward, licensed or unlicensed, or whoever aids or incites such distinction, discrimination or restriction, shall, for each offence, be punished by a fine of not more than three hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment, and shall forfeit to any person aggrieved thereby not less than twenty-five nor more than three hundred dollars; but such person so aggrieved shall not recover against more than one person by reason of any one act of distinction, discrimination or restriction.

P. S. 207, § 69.
1885, 316.
1893, 436.
1895, 461.
13 Allen, 247.
See 1908, 335.

Transportation of Mails.

SECTION 192. Every railroad corporation shall, upon request of the postmaster general or of an authorized agent of the post office department, carry the mails at such times and upon such trains as may be desired by him upon the terms provided in the two following sections.

Transportation of United States mails, when, etc.
1867, 351, § 1.
P. S. 112, § 184.
R. L. 111, § 236.

SECTION 193. A corporation which is unable to agree with the postmaster general or other proper officer of the United States as to the compensation to be paid for such transportation may notify the postmaster general of its unwillingness to carry the mails upon the terms proposed; and after the expiration of three months from the depositing of such notice in a post office in this commonwealth, addressed to the postmaster general, such corporation shall be absolved from the duty imposed in the preceding section, unless he or some officer or agent of the post office department within that time has filed a petition in the supreme judicial court in any county, praying for the appointment of three commissioners to fix the price to be paid to the corporation for such service; and the court, after notice to the corporation, shall appoint three commissioners to hear the parties and determine such compensation, the award of a major part of whom, being made to and confirmed by said court, shall be final as to all past service and for the period of two years after such confirmation.

Compensation for carrying mails, how determined.
1867, 351, § 2.
P. S. 112, § 185.
R. L. 111, § 237.

SECTION 194. Upon application to said court by either party to such proceedings at any time after the expiration of two years from the confirmation of such award, the matter may be reopened, and the same or other commissioners shall rehear the parties, and the award of said commissioners or of a major part of them, when made to and confirmed by said court, shall be binding on the parties for two years after such confirmation, when like proceedings may again be had on petition of either party.

Revision of rates.
1867, 351, § 3.
P. S. 112, § 186.
R. L. 111, § 238.

Transportation of Merchandise.

SECTION 195. A railroad corporation shall, upon request, without additional charge, give a receipt describing articles, packages or commodities not extra hazardous delivered to it for transportation. A corporation which refuses to give such receipt shall forfeit fifty dollars to the person who is entitled thereto.

Receipts to shippers of merchandise.
1872, 308.
1874, 372, § 137.
P. S. 112, § 187.
R. L. 111, § 239.

Equal facilities for transportation. 1867, 339. 1874, 372, § 138. P. S. 112, § 188. R. L. 111, § 240. 115 Mass. 416. 128 Mass. 326. 147 Mass. 35. 266. 165 Mass. 398.

— to local expressmen. 1894, 469, §§ 1, 5, 6. R. L. 111, § 241. 165 Mass. 398. See R. L. 70, § 8. 201 Mass. 579.

SECTION 196. Every railroad corporation shall, subject to the provisions of section two hundred and one, give to all persons reasonable and equal terms, facilities and accommodations for the transportation upon its railroad of themselves, their agents and servants, and of their merchandise and other property and for the use of its depot and other buildings and grounds; and, at any point where its railroad connects with another railroad, it shall give reasonable and equal terms and facilities of interchange.

SECTION 197. The provisions of the preceding section shall apply to all persons engaged only in a local express business for the forwarding of express matter between points within the commonwealth in the trains or cars of any railroad corporation, and to persons desiring to engage therein who obtain the recommendation of the board of railroad commissioners therefor, and who agree in writing to indemnify the corporation against all loss and damage to any property which is carried by them on its trains. Such recommendation shall be given only after notice to all parties interested and a hearing thereon, and with regard, among other considerations, to the public interest. Such corporation may contract with one or more persons for the express service over its railroad or system, subject to the rights of such persons as may then be engaged in, or shall have obtained the recommendation aforesaid to conduct, such local express business thereon between points within this commonwealth under the provisions of this section; and the terms, facilities and accommodations provided for such last named persons shall not be unreasonable or unequal, having regard to the amount and character of the service and also to such reasonable regulation of said business as may be for the public interest and the efficient operation of the railroad. The provisions of this section shall not deprive any railroad corporation of any right which it has under its charter or under general laws, to perform all the transportation of property upon its railroad. The supreme judicial court or the superior court shall have jurisdiction to enforce the provisions of this section by injunction, mandamus or other suitable process.

Acts of 1912, Chapter 725, Part II, § 7.

Charges for transportation of freight, etc.

SECTION 7. A railroad corporation shall not, at any time, charge, demand or receive, or be entitled to charge, demand or receive, a greater sum for transportation by it of freight from any point of origin, for the same distances and under like conditions, on any lines operated by it or in connection with it, to the port of Boston for export to foreign countries, than is at the time received by it for transportation of the like class and quantity of freight to any other port reached by its lines for export to foreign countries; or charge, demand or receive, or be entitled to charge, demand or receive, a greater sum for transportation for the same distance and under like conditions from the port of Boston of freight from foreign countries through said port of Boston to any point on any lines operated by it or in connection with it than is at the time received by it for transportation of the like class and quantity of freight through any other port

on its lines to the same point: *provided, however*, that if the aforesaid provisions of this section shall conflict with any regulations made by act of congress this section shall be null and void so far as it conflicts therewith; and *provided, further*, that nothing herein contained shall justify the charging of the same rate for freight for export or import through any other port reached by its lines where the mileage from the point of receipt or delivery is less to the port of Boston than to the port in question, in which case the rate through Boston shall be proportionately less.

SECTION 198. Every railroad corporation shall promptly forward merchandise consigned to or directed to be sent over another railroad connecting with its railroad, according to the directions contained thereon or accompanying the same, and shall not receive and forward over its railroad merchandise consigned to or directed to be sent by a different route.

Merchandise to be forwarded promptly. 1859, 209, § 1. G. S. 63, § 114. 1874, 372, § 139. P. S. 112, § 189. R. L. 111, § 242.

SECTION 199. A railroad corporation shall not charge or receive for the transportation of freight to any station on its railroad a greater amount than is at the time charged or received for the transportation of the like class and quantity of freight from the same original point of departure to a station at a greater distance on its railroad in the same direction. Two or more railroad corporations whose railroads connect shall not charge or receive for the transportation of freight to any station on the railroad of either of them a greater amount than is at the time charged or received for the transportation of the like class and quantity of freight from the same original point of departure to a station at a greater distance on the railroad of either of them in the same direction. In the construction of this section, the amount charged or received for the transportation of freight shall include all terminal charges; and the railroad of a corporation shall include all the railroad in use by it, whether owned or operated under a contract or lease.

Charges for transportation of freight. 1871, 363. 1874, 372, § 140. P. S. 112, § 190. R. L. 111, § 243. 124 Mass. 561.

SECTION 200. A railroad corporation which violates any provision of the four preceding sections, in addition to liability for all damages sustained by reason of such violation, shall for each offence forfeit two hundred dollars, which shall be recovered in an action of tort to his own use by the party aggrieved, or to the use of the commonwealth by the attorney-general or the district attorney of the district in which such violation was committed; but no such action shall be maintained unless brought within one year after the date of such violation.

Penalties on corporation. 1859, 209, § 2. G. S. 63, § 114. 1873, 240. 1874, 372, § 141. 1880, 258. P. S. 112, § 191. R. L. 111, § 244. 143 Mass. 264.

SECTION 201. A railroad corporation shall not in its charges for the transportation of freight or in the conduct of its freight business, make or give any undue or unreasonable preference or advantage to or in favor of any person, firm or corporation, nor subject any person, firm or corporation to any undue or unreasonable prejudice or disadvantage.

Discrimination in freight rates forbidden. 1882, 94, 225. R. L. 111, § 245.

Acts of 1913, Chapter 784, § 10.

SECTION 10. The commission may inquire into the rates, charges, regulations, practices, equipment and services of common carriers in this commonwealth, and elsewhere, rendering any service of a kind sub-

Rates, etc., of common carriers.

ject to its jurisdiction. It may be represented at any public hearings before any legislative committee or public board in this commonwealth, or of any other state or of the United States, with respect to any proposed legislation or action by public authorities within or without the commonwealth affecting any public service within the commonwealth subject to its supervision, whenever in its opinion such representation is desirable in the interests of this commonwealth. It may apply by petition to the interstate commerce commission for relief, and may present evidence and arguments to the said commission, in any case in which it is of opinion that a common carrier subject to its supervision is violating any provision of the interstate commerce law or any valid order or regulation made under authority thereof. The commission may also confer with or appear before boards of other states having powers over any of the common carriers rendering public services of the kind hereinbefore described, when in its judgment the interests of the commonwealth will be promoted thereby.

Commission may petition interstate commerce commission.

May confer etc., with boards of other states.

Revised Laws, Chapter 69, §§ 1-16.

PUBLIC WAREHOUSEMEN.

Public warehousemen, how licensed. 1860, 206, § § 1, 11. 1879, 104. 1880, 63. P. S. 72, § § 1, 2, 13. 1885, 167.

SECTION 1. The governor, with the advice and consent of the council, may license in any city or town suitable persons, or corporations established under the laws of the commonwealth and having their places of business within the commonwealth, to be public warehousemen. . . . A railroad corporation which is licensed as a public warehouseman shall not be required as such to receive any property except such as has been or is forthwith to be transported over its road or to give sureties on its bond.

See 1907, 532, An act to make uniform the law of warehouse receipts.

Action on bond of. 1860, 206, § 2. 1873, 210, § 1. P. S. 72, § 3.

SECTION 2. Whoever is injured by the failure of a public licensed warehouseman to perform his duty or by his violation of any of the provisions of this chapter may bring an action for his own benefit, in the name of the commonwealth, on the bond of such warehouseman. . . .

Warehouseman to insure property, when. 1860, 206, § 3. 1879, 104. P. S. 72, § 4.

SECTION 3. Such warehouseman shall, upon request in writing by a party placing property with him on storage, cause such property to be insured for whom it may concern. A railroad corporation which is such warehouseman may itself be the insurer.

Form of receipt. 1860, 206, § 3. 1878, 93, § § 2, 5. P. S. 72, § 5. 1886, 258.

SECTION 4. Every such warehouseman shall give to each person who deposits property with him for storage a receipt therefor, which shall be negotiable in form, shall describe the property, shall state distinctly the brands or distinguishing marks thereon, the rate of charges for storing it and the amount and rate of insurance thereon, and, if it is grain, the quantity and inspected grade thereof; or, upon request, he shall give a similar receipt, non-negotiable in form, which shall have the words "not negotiable" plainly written, printed or stamped upon the face thereof.

Transfer of title of goods stored. 1860, 206, § 4. 1873, 210, § 3. 1878, 93, § 1. P. S. 72, § 6. 1886, 258. 135 Mass. 1.

SECTION 5. The title to property which is stored in a public warehouse under a warehouseman's negotiable receipt therefor shall pass to a purchaser or pledgee by the indorsement and delivery to him of such receipt signed by the person to whom the receipt was originally given or by an indorsee thereof; and if so stored under a warehouseman's non-negotiable receipt, shall pass by assignment of such receipt when recorded on the books of the warehouseman issuing it.

Special provision for grain, etc. 1878, 93, § 3. P. S. 72, § 7.

SECTION 6. If grain or other property which is stored in a public warehouse is so mixed or intermingled that the identity of different lots or parcels cannot be accurately preserved, the warehouseman's receipt shall give a valid title to so much of such grain or property as is designated therein, without actual separation or identification.

SECTION 7. Such warehouseman shall keep books in which shall be entered an account of all his transactions relative to the storing and insuring of goods, wares and merchandise, to the issuing of receipts therefor and to the disposition of proceeds of sales thereof under the provisions of this chapter. Such books shall be open to the inspection of any person actually interested in the property to which the entries relate.

Warehouseman to keep books.
1860, 206, § 6.
1878, 93, § 5.
1879, 104.
P. S. 72, § 8.
1887, 277, § 3.
1895, 348, § 1.

SECTION 8. The secretary of the commonwealth shall, at the expense of each warehouseman, give notice of his license and qualification, of the amount of the bond given by him and also of the discontinuance of his license by publishing the same for not less than ten days in one or more newspapers, if any, published in the county or town in which the warehouse is located; otherwise, in one or more newspapers published in the city of Boston.

Notice of licenses, etc., to be published.
1860, 206, § 7.
P. S. 72, § 9.

SECTION 9. If a public warehouseman has in his possession, in storage, upon a non-negotiable receipt, property of a perishable nature, or which, by keeping, will deteriorate greatly in value, or, by its odor, leakage, inflammability or explosive nature, will be liable to injure other property, or of a value which will probably be insufficient to pay the storage charges thereof, he may, after notice to the person in whose name the property is stored to remove said property and to pay the storage and other proper charges thereon, and the refusal or neglect of such person so to do, sell the same at public or private sale without advertising. If, on reasonable inquiry, such person cannot be found, the sale may be made without notice. The proceeds of the sale, after deducting the expenses thereof and the storage and other proper charges, shall be paid or credited to the person in whose name the property was stored, or if he cannot be found, to the treasurer and receiver general, who shall pay it over to the owner thereof upon proof of his title thereto within one year after its receipt by the treasurer. If such warehouseman has made a reasonable effort to sell perishable or worthless property and has been unable so to do, he may dispose of it in any lawful manner, and shall not be liable for such disposition.

Disposition of perishable property.
1895, 348,
§§ 3, 4.

SECTION 10. If, from the sale or other disposition authorized by the preceding section, no proceeds are realized or the proceeds are insufficient to pay the expenses of sale and the storage and other proper charges, the person in whose name said property was stored shall be liable to such warehouseman for all proper charges against such property or for such amount as equals the difference between the charges due thereon and the proceeds of such sale or disposition.

Liability of depositor for charges.
1895, 348, § 5.

SECTION 11. A public warehouseman who has in storage any property for which a storage charge is at least one year overdue, may sell the same by public auction after notice in writing to the person in whose name it is stored that such property will be sold at a time and place specified in the notice unless the amount due for storage, the advances made thereon and the expenses of advertising and sale are paid before the sale is made. From the proceeds, he may retain said storage charges, advances made and expenses of advertising and sale.

Sales to pay overdue charges.
1887, 277, § 1.

SECTION 12. The notice required by the preceding section shall be served by an officer authorized to serve civil process or by some other person by delivering it to the person in whose name such property is stored at the time of such service or by leaving it at his usual place of abode, if within the commonwealth, at least sixty days before the time of such sale; in the event that the party storing such goods shall have parted with the same, and the purchaser shall have notified the warehouseman, with his address, such notice shall be given to such person in

Service of notice of sale.
1887, 277, § 2.
1895, 348, § 6.

lieu of the person storing the goods. A return of service of such notice shall be made under oath. If the person in whose name such property is stored cannot, with reasonable diligence, be found within the commonwealth, such notice shall be published once in each of three successive weeks in a newspaper published in the city or town in which the warehouse is located, if any; otherwise, in one of the principal newspapers published in the county in which such city or town is located, the last publication to be at least thirty days before the time of sale.

Disposition of
proceeds of
sales.
1887, 277, § 3.

SECTION 13. Such warehouseman shall, on demand, pay over the surplus of the proceeds of a sale authorized by section eleven to the person entitled thereto, but if it is not claimed within six months after such sale, he shall pay such surplus to the treasurer and receiver general and shall, at the same time, file with him an affidavit stating the name and residence of the person whose property has been sold, the articles sold and the prices obtained therefor, the name and residence of the auctioneer and a copy of the notice served or published with the return thereof. The copy of notice and return so filed shall be admitted as evidence of the giving of the notice. The treasurer and receiver general shall pay it over to the owner thereof upon proof of his title thereto within five years after its receipt by the treasurer.

Penalty for
selling, etc.,
property
deposited.
1860, 206, § 8.
P. S. 72, § 10.
1895, 348, § 2.

SECTION 14. Whoever, with intent to injure or defraud, unlawfully sells, pledges, lends or in any other way disposes of, or permits or is a party to the unlawful selling, pledging, lending or other disposition of, any property stored in a public warehouse, without the authority of the person in whose name the same is stored, shall be punished by a fine of not more than five thousand dollars and by imprisonment in the state prison for not more than three years.

— for forging,
etc., ware-
house receipt,
etc.
1860, 206, §§ 9,
10.
P. S. 72, §§ 11,
12.

SECTION 15. Whoever falsely makes, utters, forges or counterfeits, or whoever permits or is a party to the false making, uttering, forging or counterfeiting of, a warehouse receipt, certificate or other instrument, or of the signature of a warehouseman or of an indorser or other person to an instrument used to pass or to give title to property stored in a public warehouse, shall be punished by a fine of not more than five thousand dollars and by imprisonment in the state prison for not more than three years.

Penalty for
disposing of
receipt after
attachment,
etc.
1860, 206, § 12.
P. S. 72, § 14.

SECTION 16. Whoever, knowing that his interest in the property described in a warehouseman's receipt has been attached, indorses, assigns or otherwise disposes of such receipt without disclosing such attachment to the person to whom such receipt is indorsed, assigned or disposed of, shall be punished by a fine of not more than five thousand dollars and by imprisonment in the state prison for not more than three years, or by imprisonment in jail for not more than one year.

PERISHABLE ARTICLES TO BE SOLD.

Revised Laws, Chapter 95, §§ 5, 6.

Perishable
articles trans-
ported by com-
mon carriers
may be sold.
1857, 237.
G. S. 80, § 5.
P. S. 96, § 5.

SECTION 5. When a common carrier has transported fresh meats, fresh fish, shell fish, fruit or vegetables, to their destination, has notified the owner or consignee of their arrival, and the owner or consignee after such notice refuses or omits to receive and take them away and to pay the freight and proper charges thereon, said carrier may, in the exercise of a reasonable discretion, sell the same at public or private sale without advertising, and the proceeds, after deducting the amount of said freight and charges and expenses of sale, shall be paid to the owner or consignee. If the owner or consignee on reasonable inquiry cannot be found, the sale may be made without such notice.

SECTION 6. If goods carried by a railroad company or in a steam or sailing vessel are not called for by the owner or consignee within one year after the date of their receipt at the city or town to which they are consigned, they may be sold by public auction for the charges of transportation due thereon, notice of the time and place of sale first being given by publishing the same three days in each of three successive weeks in a newspaper, if any, published in such city or town, otherwise in the newspaper published nearest thereto. The proceeds of goods so sold, after deducting costs of transportation, storage, advertising and sale, shall be placed to the credit of the owner in the books of the company or owner of the vessel making the sale, and shall be paid to the owner of the goods on demand.

Sale of un-
claimed goods.
1866, 152.
P. S. 96,
§§ 6, 7.

Revised Laws, Chapter 212, §§ 73, 74.

SECTION 73. Railroad corporations shall not permit animals which they are carrying or transporting to be confined in cars longer than twenty-eight consecutive hours without unloading them for at least five consecutive hours for rest, water and feeding, unless prevented by storm or accident. In estimating such confinement, the time during which the animals have been confined without such rest on connecting roads from which they are received shall be included. Animals so unloaded shall during such rest be properly fed, watered and sheltered by the owner or person having the custody of them, or, in case of his default, by the railroad corporation transporting them, at the expense of said owner or person in custody thereof. In such case the corporation shall have a lien upon such animals for food, care and custody furnished, and shall not be liable for such detention. A corporation, owner or custodian of such animals who fails to comply with the provisions of this section shall be punished by a fine of not less than one hundred nor more than five hundred dollars. The provisions of this section shall not apply to animals carried in cars in which they can and do have proper food, water, space and opportunity for rest.

Rest for
animals
transported.
1868, 212, § 5.
1869, 344, § 3.
1874, 372,
§ 142.
P. S. 207, § 55.
170 Mass. 44.
1907, 490.

SECTION 74. A person found violating any provision of sections seventy and seventy-three may be arrested and held without a warrant as provided in section forty-seven; and the person making an arrest with or without a warrant shall use reasonable diligence to give notice thereof to the owner of animals found in the charge or custody of the person arrested, shall properly care and provide for such animals until the owner thereof takes charge of them, not, however, exceeding sixty days from the date of said notice and shall have a lien on said animals for the expense of such care and provision.

Arrest for
cruelty to
animals.
1869, 344, § 4.
P. S. 207, § 56.

Revised Laws, Chapter 78, § 43.

SECTION 43. No common carrier or other person shall convey or cause to be conveyed, through or from any city or town in this commonwealth, the body of any person who has died of small pox, scarlet fever, diphtheria or typhus fever until such body has been so encased and prepared as to preclude any danger of contagion or infection by its transportation; and no city or town clerk, or clerk or agent of the board of health, shall give a permit for the removal of such body until he has received from the board of health of the city or from the selectmen of the town in which the death occurred a certificate stating the cause of death, and that said body has been prepared in the manner prescribed in this section, which certificate shall be delivered to the agent or person who receives the body. Whoever violates the provisions of this section shall forfeit not more than twenty-five dollars.

Transportation of dead
bodies regulated.
1883, 124, § 2.
1887, 335.
1897, 437, § 6.

Acts of 1907, Chapter 517, § 1, as amended by 1910, 497.

An Act relative to the Registration of Carriers of Intoxicating Liquors.

R. L. 100, § 49,
amended.
Amended by
1910, 497, § 1.

SECTION 1. Section forty-nine of chapter one hundred of the Revised Laws is hereby amended by inserting after the word "business", in the sixth line, the words:— and to no other person or corporation, — by inserting after the word "contained", in the ninth line, the words:— No person or corporation not regularly and lawfully conducting a general express business, except a railroad corporation or a street railway corporation authorized to carry freight or express, shall receive such liquors for transportation for hire or reward for delivery in a city or town, in which licenses of the first five classes are not granted, nor transport or deliver such liquors in such cities or towns, — and by striking out the words "or by any other person", in the twelfth line, so as to read as follows:— *Section 49.* Spirituous or intoxicating liquor which is to be transported for hire or reward for delivery in a city or town in which licenses of the first five classes are not granted, shall be delivered by the seller or consignor to a railroad corporation or steamboat corporation operating a regular line of steamships to Martha's Vineyard or Nantucket or to a person or corporation regularly and lawfully conducting a general express business, and to no other person or corporation, in vessels or packages plainly and legibly marked on the outside with the name and address, by street and number, if there be such, of the seller or consignor, and of the purchaser or consignee, and with the kind and amount of liquor therein contained. No person or corporation not regularly and lawfully conducting a general express business, except a railroad corporation or steamboat corporation operating a regular line of steamships to Martha's Vineyard or Nantucket, or a street railway corporation authorized to carry freight or express, shall receive such liquors for transportation for hire or reward for delivery in a city or town, in which licenses of the first five classes are not granted, nor transport or deliver such liquors in such cities or towns. Delivery of such liquors or any part thereof by a railroad corporation, or steamboat corporation or by a person or corporation regularly and lawfully conducting a general express business to a person, other than the owner or consignee, whose name is marked by the seller or consignor on said vessels or packages, or at any other place than is thereon marked, shall be deemed to be a sale by any person making such delivery to such person in the place in which such delivery is made.

Acts of 1910, Chapter 497, § 2.

1906, 421, § 1,
amended.

SECTION 2. Section one of chapter four hundred and twenty-one of the acts of the year nineteen hundred and six is hereby amended by inserting after the word "railroad", in the first line, the words:— corporation, or steamboat corporation operating a regular line of steamships to Martha's Vineyard or Nantucket, — so as to read as follows:— *Section 1.* No person or corporation, except a railroad corporation, or steamboat corporation operating a regular line of steamships to Martha's Vineyard or Nantucket, or street railway corporation, shall, for hire or reward, transport spirituous or intoxicating liquors into or in a city or town in which licenses of the first five classes for the sale of intoxicating liquors are not granted, without first being granted a permit so to do as hereinafter provided.

SECTION 3. This act shall take effect upon its passage. [Approved May 7, 1910.]

Revised Laws, Chapter 100, § 50.

SECTION 50. Every railroad corporation and every person or corporation regularly and lawfully conducting a general express business, receiving spirituous or intoxicating liquor for delivery, or actually delivering intoxicating liquor to any person or place in a city or town described in the preceding section, shall keep a book, and plainly enter therein the date of the reception by it or him of each vessel or package of such liquor received for transportation, and a correct transcript of the marks provided for by said section, and the date of its delivery by it or him, and the name of the person to whom it was delivered shall be signed to the same as a receipt; and said book shall at all times be open to the inspection of the officers named in section twenty-seven. Such officers shall not make public the information obtained by such inspection except in connection with the enforcement of law.

Record of receipt, etc., to be kept. 1897, 271, § 2. 1906, 421. 1907, 517. 1910, 497. 1911, 423.

TRANSPORTATION OF EXPLOSIVES.

Revised Laws, Chapter 102, §§ 96-98.

SECTION 96. No person, unless on military duty in the public service of the United States or of this commonwealth, shall keep, have or possess, in a building, place, vehicle or vessel, within one rod of a dwelling house, any explosive in quantity exceeding one-fifth of a pound in any way or manner prohibited by the provisions of the nine following sections, or by any ordinance or by-law which may be made in accordance with the provisions of the following section.

Explosives, how kept. 1877, 216, § 1. P. S. 102, § 59.

SECTION 97. The city council of a city or town may make ordinances and by-laws, not inconsistent with the provisions hereof or with rules made by the board of railroad commissioners as authorized by section ninety-nine, for the protection of life and property, relative to the keeping, storage, use, manufacture or sale of explosives, and may regulate the transportation thereof through the streets or highways of such city or town, and affix penalties of not more than fifty dollars for each violation thereof.

— manufacture, storage, etc., of. 1847, 51. 1877, 216, § 2. P. S. 102, § 60. 155 Mass. 533. [Amended, 1905, 280, § 1.]

SECTION 98. The mayor and aldermen and the selectmen, respectively, may license, upon such terms as may be prescribed in such ordinances or by-laws, the keeping, storage, transportation, use, manufacture or sale of explosives within the limits of such city or town.

— licenses for sale and use of. 1877, 216, § 3. P. S. 102, § 61.

For additional laws as to transportation of explosives see other sections of R. L. Chapter 102, and Acts of 1910, Chapter 588, below; 1904, 370; 1905, 280; 1908, 502.

Acts of 1910, Chapter 588.

An Act to transfer from the Board of Railroad Commissioners to the District Police Certain Powers and Duties relative to the Transportation of Explosives.

SECTION 1. Sections ninety-nine, one hundred and one hundred and one of chapter one hundred and two of the Revised Laws are hereby repealed; but this repeal shall not affect any suit, prosecution or other proceeding pending at the time of the repeal.

R. L. 102, § 99, 100, 101, repealed.

SECTION 2. The detective and fire inspection department of the district police may adopt and prescribe regulations for the transportation of gunpowder and other explosives or explosive or inflammable fluids or compounds by steam railroads or otherwise, and may from time to time change or amend such regulations.

SECTION 3. The rules heretofore made by the board of railroad commissioners under authority conferred by section ninety-nine of chapter one hundred and two of the Revised Laws, and now in force, shall continue in force until superseded or annulled by the detective and fire inspection department of the district police acting under the authority of this act.

SECTION 4. Whoever knowingly violates or knowingly causes or permits the violation of any regulation adopted and prescribed under the authority of this act shall be punished by a fine not exceeding one thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment. [*Approved June 3, 1910.*]

STORAGE OF OILS, ETC.

Revised Laws, Chapter 102, § 118.

Oils not to remain in streets.
1869, 152, § 8.
P. S. 102, § 74.
See 1905, 280.
Powers of district police.
See also 1908, 502.

SECTION 118. None of the articles named in sections one hundred and six to one hundred and fourteen, inclusive, shall be allowed to remain in a street, lane, alley or travelled way, upon a wharf, in a yard, or on the grounds of a railroad corporation, in a city, for more than twenty-four hours or in a town, for more than forty-eight hours, without a special permit from the mayor and aldermen or selectmen, or from a person authorized by them. Whoever so keeps such articles for a longer time shall be punished by a fine of not more than fifty dollars for each offence.

Acts of 1905, Chapter 324.

An Act relative to Trustee Process.

Common carrier not to be held liable in certain cases.

When a common carrier, summoned as trustee in an action at law, has in his or its possession goods shipped by or consigned to a defendant in such action, such carrier, in the absence of collusion or fraud on his or its part, shall not be held liable to the owner or consignee by reason of his or its failure to transport and to deliver said goods until the attachment is dissolved or the carrier is discharged as trustee. [*Approved April 21, 1905.*]

Transportation of Milk.

Transportation of milk.
1879, 206,
§§ 1, 3.
P. S. 112,
§ 192.
1893, 210, § 1.
R. L. 111,
§ 246.
Amended.
1910, 633, § 1.

SECTION 202. A railroad corporation shall not receive, forward or deliver milk in large quantities over any portion of its line, or permit others so to do, under contract, lease or hiring of cars or otherwise, without at the same time providing, as regards time, care and preservation of the milk and the return of the empty cans, equal facilities and advantages for receiving, forwarding and delivering milk by the can over the same portion of its line; nor without establishing a tariff for the milk by the can which is [fairly proportionate to] the *same* rate which it charges or receives as aforesaid for milk in large quantities.

Acts of 1910, Chapter 633, § 1.

An Act relative to the Transportation and Sale of Milk.

1906, 463,
Part II, § 202,
amended.

SECTION 1. Section two hundred and two of Part II of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby amended by striking out the words "fairly proportionate to", in the tenth line, and by inserting the word: — same, — after the word "the", in the tenth line, — so as to read as follows: — *Section 202.* A railroad corporation shall not receive, forward or deliver milk in large

quantities over any portion of its line, or permit others so to do, under contract, lease or hiring of cars or otherwise, without at the same time providing, as regards time, care and preservation of the milk and the return of the empty cans, equal facilities and advantages for receiving, forwarding and delivering milk by the can over the same portion of its line; nor without establishing a tariff for the milk by the can which is the same rate which it charges or receives as aforesaid for milk in large quantities.

SECTION 203. Upon the petition of one or more persons who desire to forward milk by the can over any railroad or any portion or portions thereof, the board of railroad commissioners, after notice to the railroad corporation and a hearing, shall ascertain and compare the tariff established as aforesaid for milk by the can with the rate charged or received as aforesaid for milk in large quantities over such railroad or such portion or portions thereof; and if the former is, in the judgment of said board, [unreasonably high, as compared with] *higher than* the latter, said board shall revise said tariff and shall fix such rate for milk by the can as [in its judgment is fairly proportionate to] *it finds to be* the rate for milk in large quantities, including in both cases the same care and preservation of the milk and the return of the empty cans, as aforesaid; and shall notify the corporation in writing of the rate by the can so fixed over such railroad or such portion or portions thereof; but [milk received by one railroad corporation from another shall not be considered as received at the point of junction of the two railroads, in comparing and fixing as aforesaid the rate for milk by the can tendered at such point of junction] *the rates by the can so fixed shall not be higher than the rates charged by the same railroad corporation for a longer distance on any part of its system.*

Transportation of milk, tariff for, how fixed. 1879, 206, § 2. P. S. 112, § 193. 1893, 210, § 2. R. L. 111, § 247. 158 Mass. 1. Amended. 1910, 633, § 2.

Acts of 1910, Chapter 633, §§ 2, 3.

SECTION 2. Section two hundred and three of Part II of said chapter four hundred and sixty-three is hereby amended by striking out the words "unreasonably high, as compared with", in the tenth line, and inserting in place thereof the words:— higher than,— and by striking out the words "in its judgment is fairly proportionate to", in the twelfth and thirteenth lines, and inserting in place thereof the words:— it finds to be,— and by striking out all after the word "but", in the eighteenth line, and inserting in place thereof the words:— the rates by the can so fixed shall not be higher than the rates charged by the same railroad corporation for a longer distance on any part of its system,— so as to read as follows:— *Section 203. [For § 203 as amended, see above.]*

1906, 463, Part II, § 203, amended.

SECTION 3. No milk shall be sold in this commonwealth unless the conditions under which it is produced are subject to the inspection provided for by the laws of the commonwealth.

SECTION 204. A railroad corporation which refuses or neglects to receive, forward or deliver milk by the can over its railroad or any portion thereof at the tariff rate therefor, as provided in the preceding section, shall forfeit to the person who

Penalties. 1879, 206, § 3. P. S. 112, § 194. 1893, 210, § 3. R. L. 111, § 248.

tenders the same five dollars for each and every can of milk which it so refuses to receive or neglects to forward and deliver at the said tariff rate.

FROM SUNDAY OBSERVANCE LAW.

Revised Laws, Chapter 98, § 2.

Prohibition as to Lord's day, of labor, etc., except works of necessity, etc.
C. L. 133,
§§ 1, 2,
1692-3, 22, § 1.
1716-7, 13, § 1.
1727-8, 5,
§§ 1, 4,
1760-1, 20,
§§ 2, 9.
1782, 23, § 1.
1791, 58, § 1.
1796, 89, § 1.

SECTION 2. Whoever, on the Lord's day, keeps open his shop, warehouse or workhouse, or does any manner of labor, business or work, except works of necessity and charity, or takes part in any sport, game, play or public diversion, except a concert of sacred music or an entertainment given by a religious or charitable society the proceeds of which, if any, are to be devoted exclusively to a charitable or religious purpose, shall be punished by a fine of not more than fifty dollars for each offence; and the proprietor, manager or person in charge of such game, sport, play or public diversion, except as aforesaid, shall be punished by a fine of not less than fifty nor more than five hundred dollars for each offence.

R. S. 50, § 1.	10 Cush. 257.	407, 411.	143 Mass. 28, 167.
G. S. 84, § 1.	8 Gray, 384, 553.	101 Mass. 30, 366.	144 Mass. 362, 363.
1862, 152.	11 Gray, 308.	103 Mass. 188.	145 Mass. 99, 353.
1863, 143.	15 Gray, 433.	107 Mass. 251, 439.	155 Mass. 543.
P. S. 98, § 2.	9 Allen, 118, 452.	108 Mass. 517.	159 Mass. 101.
1895, 434, § 2.	10 Allen, 18.	112 Mass. 368, 467.	168 Mass. 519.
12 Met. 24.	11 Allen, 209.	117 Mass. 142.	170 Mass. 561.
13 Met. 284.	12 Allen, 187.	127 Mass. 123.	125 U. S. 555.
2 Cush. 556.	13 Allen, 559.	128 Mass. 148.	<i>Amended.</i>
4 Cush. 243.	97 Mass. 45, 166.	131 Mass. 546.	1904, 460, § 2.

Acts of 1904, Chapter 460, § 2.

R. L. 98, § 2, amended.
Penalty for doing certain business, etc., on the Lord's day.

SECTION 2. Whoever, on the Lord's day, keeps open his shop, warehouse or workhouse, or does any manner of labor, business or work, except works of necessity and charity, or takes part in any sport, game, play or public diversion, except a concert of sacred music or an entertainment given in good faith by a religious or charitable society in aid of a religious or charitable purpose, the entire proceeds of which, if any, less only the necessary and reasonable expenses, not to exceed twenty-five per cent of such proceeds, are to be devoted exclusively to a religious or charitable purpose, shall be punished by a fine of not more than fifty dollars for each offence; and the proprietor, manager or person in charge of such game, sport, play or public diversion, except as aforesaid, shall be punished by a fine of not less than fifty nor more than five hundred dollars for each offence.

Revised Laws, Chapter 98, §§ 3, 10, 11, 14, 15, 17.

Certain business not prohibited.
1886, 82.
1887, 391, § 2.
1893, 41.
1895, 434, § 2.
1900, 440.
1901, 80.
145 Mass. 430.
149 Mass. 68.
176 Mass. 5, 104.
See 1908, 273, for amendments.
1902, 414.
1908, 126,
273, 333, 343,
354, 537.
1910, 327.
1911, 328.

SECTION 3. The provisions of the preceding section shall not be held to prohibit the manufacture and distribution of steam, gas or electricity for illuminating purposes, heat or motive power, nor the distribution of water for fire or domestic purposes, nor the use of the telegraph or the telephone, nor the retail sale of drugs and medicines, nor articles ordered by the prescription of a physician or mechanical appliances used by physicians or surgeons, nor the retail sale of tobacco in any of its forms by licensed innholders, common victuallers, druggists and newsdealers whose stores are open for the sale of newspapers every day in the week, nor the letting of horses and carriages or of yachts and boats, nor the running of steam ferry boats on established routes, nor the running of street railway cars, nor the preparation, printing and publication of newspapers, nor the sale and delivery of newspapers, nor the whole-

sale or retail sale and delivery of milk, nor the transportation of milk, nor the making of butter and cheese, nor the keeping open of public bath houses, nor the making or selling by bakers or their employees, before ten o'clock in the morning and between the hours of four o'clock and half past six o'clock in the evening, of bread or other food usually dealt in by them, nor the carrying on of the business of bootblacks before eleven o'clock in the forenoon.

SECTION 10. Prosecutions for penalties incurred under the preceding provisions of this chapter shall be commenced within six months after the offence was committed.

R. S. 50, § 11.

G. S. 84, § 10.

P. S. 98, § 8.

Prosecutions,
when to be
instituted.
1815, 135.

SECTION 11. Sheriffs, constables and grand jurors shall inquire into and inform of all offences against the provisions of this chapter, and cause the same to be enforced.

1791, 58, §§ 10, 12.

R. S. 50, § 9.

G. S. 84, § 8.

P. S. 98, § 9.

Sheriffs, etc.,
to inform of
offences.
1727-8, 5, § 5.

SECTION 14. The board of railroad commissioners may authorize the running, on the Lord's day, of such steamboat lines and such trains upon any railroad, as, in the opinion of the board, the public necessity and convenience require, having regard to the due observance of the day.

Rule as to
steamboat
lines and
trains.
1881, 119.
P. S. 98, § 15.
1887, 391, § 3.

SECTION 15. The board of railroad commissioners may, if in their opinion the public necessity, convenience, health or welfare so requires, authorize the running of steamboats on the Lord's day for the entire year or any part thereof, upon such conditions as they deem judicious to prevent disorderly conduct or the disturbance of public worship; and may at any time revoke such authority.

— as to steam-
boats.
1897, 389.

SECTION 17. The provisions of this chapter shall not constitute a defence to an action for a tort or injury suffered by a person on the Lord's day.

1884, 37.

140 Mass. 199.

165 Mass. 346.

125 U. S. 555.

This chapter
not a defence.
1877, 232.
P. S. 98, § 3.

CONNECTING RAILROADS.

SECTION 205. If a railroad constructed after the eighth day of April in the year eighteen hundred and seventy-two meets another railroad which terminates in the same city or town, or lawfully crosses another railroad at the same level therewith, the corporation by which either of said railroads is owned may enter its railroad upon, unite the same with and use the railroad of the other; if a railroad constructed after said day meets another railroad which passes through the same city or town, the corporation by which either of said railroads is owned may, with the written consent of the board of railroad commissioners and upon such terms as said board upon hearing prescribes, enter its railroad upon, unite the same with and use the railroad of the other; and if a railroad corporation whose railroad was constructed prior to said day is specially authorized to enter its railroad upon, unite the same with and use the railroad of another corporation, each of such corporations may enter upon, unite its railroad with and use the railroad of the other; but no locomotive engine or other motive power which is not owned and controlled by the corporation owning or lawfully operating the railroad shall be allowed to run upon a railroad except with the consent of such corporation.

Connecting
railroad com-
panies may use
each other's
roads.
1845, 191,
§§ 1, 2.
1857, 291,
§§ 1, 3.
G. S. 63,
§§ 118, 119.
1872, 53, § 12;
180, § 3.
1874, 372,
§ 165.
1876, 182.
P. S. 112, §
216.
R. L. 111, §
272.
12 Gray, 393.

Acts of 1913, Chapter 784, § 25.

Through routes, joint rates may be required.

SECTION 25. Wherever there is no satisfactory through route for the transportation of passengers or freight at a reasonable rate the commission shall have power by order, after notice and a public hearing had upon complaint, to require any two or more railroad or railway companies whose lines, owned, operated, leased, or controlled by stock ownership or otherwise, form a continuous or connecting line of transportation, or could be made to do so by the construction and maintenance of switch connection or interchange track at connecting points, or by transfer of property or passengers at connecting points, to establish through routes and joint rates, fares and charges for the transportation of passengers and property, and for the operation of the cars and other equipment for such transportation, within the commonwealth, as the commission may by its order designate; and, in case such companies cannot agree as to the division of rates or the conditions under which such through routes or transportation shall be established or such cars or other equipment operated, the commission shall have power, after due hearing, to determine and prescribe the proportionate portions of such through rates payable to each of such companies, the conditions under which such through routes or transportation shall be established or such cars or other equipment operated, and, in case of railways, to grant locations upon which the grantee company may construct the switch connection or interchange track necessary to the establishment of such through routes or transportation, or to the operation of such cars or other equipment: *provided, however,* that a railroad or railway company shall have control of and responsibility for the management and operation of all trains or cars while they are upon its railroad or railway as fully as if it owned them. The commission may, upon reasonable terms and conditions, require and order any railroad or railway company which carries freight in carload lots to establish and maintain for the purpose of receiving or delivering freight in carload lots, a switch connection with any private side track constructed on land adjoining the location of any such railroad or railway, if the commission is of opinion that such connection is reasonable and practicable, can be put in and used with safety, and will furnish sufficient business to justify its construction and maintenance, and the commission may grant to any railway company the necessary locations in public ways and places for any switch connection ordered by the commission to be constructed by such railway company.

Proviso.

Compensation for drawing cars, etc.
1845, 191, § 2.
1857, 291, §§ 1, 3.
G. S. 63, § 117.
1874, 372, § 166.
P. S. 112, § 217.
R. L. 111, § 273.
12 Gray, 393.
14 Allen, 469.

SECTION 206. If two corporations are authorized as in the preceding section each to enter with its railroad upon, unite the same with and use the railroad of the other, each of them shall at reasonable times and for a reasonable compensation draw over its railroad the passengers, merchandise and cars of the other, and each of them shall for a reasonable compensation provide upon its railroad convenient and suitable station accommodations for the passengers and merchandise of the other corporation passing to and over it, and shall receive and deliver the same in the manner in which it receives and delivers its own passengers and freight.

—determination of rates of.
1845, 191, §§ 2-4.
1857, 291, § 2.
1858, 10.

SECTION 207. If the corporations cannot agree upon the stated periods at which the cars of one shall be drawn over the railroad of the other, and upon the compensation to be paid

therefor, or upon the terms and conditions upon which accommodations shall be furnished for the passengers and merchandise of the other, or if two corporations operating railroads of different gauges cannot agree as to the requisite terminal accommodations, or as to the manner in which freight and passengers shall be transferred from one railroad to the other and forwarded, the board of railroad commissioners, upon the petition of either party and after notice to the other, shall hear the parties, and determine, having reference to the convenience and interest of the corporations and of the public to be accommodated thereby, the stated periods for drawing cars, the compensation therefor, the terms and conditions for passengers and merchandise, or the requisite terminal accommodations and manner of transferring passengers and freight as aforesaid; and, upon the application of either party, shall determine all questions between the parties relative to the transportation of freight and passengers and other business upon and connected with said railroads in which they are jointly interested and the manner in which the business shall be done, and shall apportion to the corporations their respective shares of the expenses, receipts and income of the same; and the award of the board of railroad commissioners shall be binding upon the respective corporations for one year and thereafter until the said board revises the same; and the compensation of said board for services and expenses under the provisions of this section shall be paid by the respective corporations in such proportions as said board shall determine and set forth in its award. Upon the request in writing of a party affected thereby, filed with said board within thirty days after the rendering thereof, the award shall be filed in the supreme judicial court which shall have jurisdiction to revise it as if it had been made by a commission appointed by said court.

SECTION 208. A railroad corporation which is created by the laws of another state shall have all the rights and privileges relative to connecting railroads, under the provisions of the three preceding sections, of a corporation which is created by the laws of this commonwealth.

SECTION 209. Two railroad corporations, which are incorporated under the laws of this commonwealth, and whose railroads enter upon or connect with each other, may contract that either corporation shall perform all the transportation upon and over the railroad of the other; and any such corporation may lease its railroad to any other such corporation; but the facilities for travel and business on either of the railroads of said corporations shall not thereby be diminished. Such leases shall be upon such terms as the directors agree, and as a majority in interest of the stockholders of both corporations at meetings called for the purpose approve, subject to the provisions of section [two hundred and seven.] *sixty-seven of Part I of this act.* The income arising from such contracts or leases shall be subject to the provisions of law relative to the right of the

G. S. 63,
 §§ 117, 118,
 1869, 408, § 5,
 1872, 180, § 4,
 1874, 372,
 § 167,
 P. S. 112,
 § 218,
 R. L. 111,
 § 274,
 9 Cush. 369,
 14 Gray, 253,
 266.

Connecting
 roads char-
 tered by other
 states.
 1860, 201,
 1874, 372, § 168,
 P. S. 112, § 219,
 R. L. 111, § 275.

Connecting
 companies
 may contract
 that one shall
 perform all
 transportation for
 the other.
 1838, 99,
 §§ 1-3,
 G. S. 63,
 §§ 115, 116,
 1872, 180, § 1,
 1873, 361,
 1874, 372,
 § 170,
 1880, 205, § 1,
 P. S. 112,
 §§ 220, 221,
 1894, 506, § 1,
 R. L. 111,
 § 276,
 10 Gray, 103,
 5 Allen, 230,
 8 Allen, 438.

[1 Op. A. G. 118.]
Amended.
1907, 585, § 8.
[For "Merger" bill, see pp. 43-46.]

commonwealth to purchase the railroads of the railroad corporations or to reduce their tolls, in the same manner as that arising from the use of the railroads. Copies of such contracts or leases shall be deposited with the board of railroad commissioners, and full statements of the facts shall be set forth in the next annual return of such corporations. The provisions of this section shall not authorize a lease or contract between two railroad corporations, each of which has a terminus in the city of Boston. The railroads of two railroad corporations shall be considered to enter upon or connect with each other, within the meaning of this section, if one of such railroads enters upon, connects with, or intersects a railroad leased to the other or operated by it under a contract as herein authorized.

Term of lease not to exceed ninety-nine years, etc.
1880, 205, § 2.
P. S. 112, § 222.
R. L. 111, § 277.

SECTION 210. A railroad corporation shall not lease or contract for the operation of its railroad for a period of more than ninety-nine years without the consent of the general court; but the provisions of this section shall not render invalid a lease which was approved by the stockholders of a corporation before the first day of July in the year eighteen hundred and eighty.

Corporate Franchise Tax.

Annual returns to tax commissioner.
1864, 208, §§ 2, 3.
1865, 283, § 3.
1880, 117, § 2.
P. S. 13, § 38.
1885, 238, § 1.
1886, 270.
1888, 413, § 24.
1898, 417; 578, § 2.
R. L. 14, § 37.
12 Allen, 75.
98 Mass. 25.
139 Mass. 561.
144 Mass. 598.
146 Mass. 408.
157 Mass. 70.
[1 Op. A. G. 278.]
Amended.
1909, 440, § 2.

SECTION 211. Every railroad corporation organized under general or special laws of the commonwealth, in addition to all returns required by its charter, shall annually, between the first and tenth days of [May,] *April*, return to the tax commissioner, under the oath of its treasurer, a complete list of its shareholders, their residences, the number of shares belonging to each, the amount of the capital stock of the corporation, its place of business and the par value and market value of the shares made up as of said first day of [May,] *April*. If stock is held as collateral security, such return shall state the name and residence of the pledgor and of the pledgee. It shall also contain a statement in detail of the works, structures, real estate and machinery owned by said corporation and subject to local taxation within the commonwealth, and of the location and value thereof. A railroad corporation, whether chartered or organized in this commonwealth or elsewhere, shall also state in its return the whole length of its lines, and so much of the length of its lines as is without the commonwealth.

Valuation of corporate franchise, etc.
Deductions.
1864, 208, §§ 5, 6.
1865, 283, §§ 4, 5.
1880, 117, § 2.
P. S. 13, §§ 39, 40.
1885, 238, § 1.
1886, 270.
1898, 417.
R. L. 14, § 38.
13 Allen, 391.
98 Mass. 19, 25.
100 Mass. 184, 399.
125 Mass. 568.

SECTION 212. The tax commissioner shall ascertain from the returns or otherwise the true market value of the shares of each railroad corporation, and shall estimate therefrom the fair cash value of all of said shares constituting its capital stock on the preceding first day of [May,] *April*, which, unless by the charter of the corporation a different method of ascertaining such value is provided, shall, for the purposes of this act, be taken as the true value of its corporate franchise. From such value there shall be deducted, in case of a railroad corporation, whether chartered or organized in this commonwealth or elsewhere, so much of the value of its capital stock as is proportional to the

length of that part of its line, if any, lying without the commonwealth; and also the value of its real estate and machinery subject to local taxation within the commonwealth.

For the purposes of this section, the tax commissioner may take the value at which such real estate and machinery is assessed at the place where it is located as the true value, but such local assessment shall not be conclusive of the true value thereof.

SECTION 213. The tax commissioner may require the corporation to prosecute an appeal from the valuation of its real estate or machinery by the assessors of a city or town, either to the county commissioners or to the superior court, whose decision shall be conclusive upon the question of value. Upon such appeal the tax commissioner may be heard, and in the superior court costs may be awarded as justice requires.

SECTION 214. Every railroad corporation shall annually pay a tax upon its corporate franchise, after making the deductions provided for in section two hundred and twelve, at a rate *equal to the average of the annual rates for the three years preceding the year in which the assessment is laid, the annual rate to be determined by an apportionment of the whole amount of money to be raised by taxation upon property in the commonwealth during the same year as returned by the assessors of the several cities and towns under the provisions of section ninety-three of chapter twelve of the Revised Laws, and amendments thereof*, upon the aggregate valuation of all cities and towns for the preceding year as returned under sections sixty and sixty-one of said chapter *and amendments thereof*; but if the return from any city or town is not received [prior to the twentieth day of] *on or before the first Monday of August*, the amount raised by taxation in said city or town for the preceding year, as certified to [said secretary of the commonwealth,] *the tax commissioner* may be adopted for the purpose of this determination. The amount of tax assessed upon polls for the preceding year, as certified to [said secretary] *the tax commissioner*, may be taken as the amount of poll tax to be deducted from the whole amount to be raised by taxation, in ascertaining the amount to be raised upon property.

137 Mass. 80.
139 Mass. 561.
144 Mass. 598.
146 Mass. 408.
152 Mass. 372.
157 Mass. 70.
167 Mass. 522.
163 U. S. 1.
Amended.
1909, 440, § 2.

Corporation to
appeal from
local valuation,
when.
1865, 283, § 6.
P. S. 13, § 41.
1890, 127, § 7.
1898, 417.
R. L. 14, § 39.

Tax to be paid
on corporate
franchise.
Rate, how determined.
1864, 208, § 5.
1865, 283, § 5.
1880, 117, § 2.
P. S. 13, § 40.
1885, 238, § 1.
1886, 270.
1888, 413, § 24.
1898, 417.
R. L. 14, § 40.
12 Allen, 75,
298.
98 Mass. 19, 25.
99 Mass. 146,
151.
105 Mass. 527.
135 Mass. 569.
137 Mass. 80.
139 Mass. 561.
146 Mass. 408.
157 Mass. 70.
167 Mass. 522.
6 Wallace, 632.
178 U. S. 120.
Amended by
1909, 513, § 1.

Acts of 1909, Chapter 513, § 1.

An Act relative to the Apportionment Rate of Corporate Franchise Taxes.

SECTION 1. Section two hundred and fourteen of Part II of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby amended by inserting after the word "rate", in the fourth line, the words:— equal to the average of the annual rates for the three years preceding the year in which the assessment is laid, the annual rate to be, — by inserting after the word "Laws", in the ninth line, the words:— and amendments thereof, — by inserting after the word "chapter", in the eleventh line, the words:— and amendments thereof, — by striking out the words "prior to the twentieth day of", in the twelfth and thirteenth lines, and inserting in place thereof the

1906, 463,
Part II, § 214,
amended.

words:—on or before the first Monday of, — by striking out the words “said secretary of the commonwealth”, in the fifteenth line, and inserting in place thereof the words:— the tax commissioner, — and by striking out the words “said secretary”, in the eighteenth line, and inserting in place thereof the words:— the tax commissioner, — so as to read as follows:— *Section 214. [For § 214 as amended, see above.]*

Revised Laws, Chapter 12, § 61.

Assessors triennially to deposit with the secretary of the commonwealth copies of valuation books.
1861, 167, § 3.
1864, 210, § 1.
P. S. 11, § 55.
1883, 91.
1894, 318.
See 1908, 314, 1912, 222.

SECTION 61. The assessors of cities and towns, except the city of Boston, shall, on or before the first day of October in the year nineteen hundred and four and in every third year thereafter, deposit in the office of the secretary of the commonwealth, in books to be by him provided for the purpose, a copy of the assessors' valuation-books of those years, to be by them certified under oath. Said assessors shall also annually, on or before the first day of October, and the assessors of the city of Boston, on or before the first day of November, in like manner deposit an attested copy of the table of aggregates required by the provisions of the preceding section.

Revised Laws, Chapter 12, § 93.

(As amended by 1904, chapter 191, and 1906, chapter 271, § 11.)

Returns to tax commissioner of corporate property and amount of taxes laid.
1864, 208, § 1.
1865, 283, § 1, 14.
P. S. 11, §§ 86, 87.
13 Allen, 391.
1909, 440, § 2;
Now 1909, 490, Part I, § 93.

SECTION 93. Assessors shall annually, on or before the first Monday of July, return to the tax commissioner the names of all corporations, except banks of issue and deposit, having a capital stock divided into shares, chartered by the Commonwealth or organized under the general laws for the purpose of business or profit and established in their respective cities and towns or owning real estate therein, and a statement in detail of the works, structures, real estate and machinery owned by each of said corporations and situated in such city or town, with the value thereof, on the first day of May preceding, and the amount at which the same is assessed in said city or town for the then current year. They shall also, on or before the first Monday of August, return to the tax commissioner the amount of taxes laid, or voted to be laid, within said city or town, for the then current year, for state, county and town purposes. They shall also, on or before the first Monday of August, return to the tax commissioner the names of all foreign corporations which have a usual place of business within said city or town. If the assessors neglect to comply with the requirements of this section, each assessor so neglecting shall forfeit one hundred dollars.

Remedy of corporation when assessors' valuation of real estate exceeds tax commissioner's.
1865, 283, § 6.
P. S. 13, § 41.
1898, 417.
R. L. 14, § 42.
137 Mass. 81.
146 Mass. 403.
152 Mass. 384.
167 Mass. 522.

SECTION 215. If the value of the real estate and machinery of a railroad corporation subject to local taxation within the commonwealth, as determined by the tax commissioner, is less than the value thereof as determined by the assessors of the place where it is situated, he shall give notice of his determination to such corporation; and, unless within one month after the date of such notice it applies to said assessors for an abatement, and, upon their refusal to grant an abatement, prosecutes an appeal under the provisions of section seventy-seven of chapter twelve of the Revised Laws, giving notice thereof to the tax commissioner, the valuation of said commissioner shall be conclusive upon said corporation.

Revised Laws, Chapter 12, § 77.

SECTION 77. A person aggrieved by the refusal of assessors to abate a tax may, within thirty days after receiving the notice provided in the preceding section, appeal therefrom by filing a complaint with the clerk of the county commissioners, or of any board exercising the powers of such commissioners, for the county in which the property taxed is situated, and if upon a hearing the board finds that the property has been overrated, it shall make a reasonable abatement and an order as to costs. If the list required to be brought in to the assessors was not brought in within the time specified in the notice required by section forty-one, the tax shall not be abated unless the appellate board finds that there was good cause for the delay or unless the assessors have so found as provided in section seventy-four. No costs shall be allowed to a complainant who has failed to file a list as required by law.

193 Mass. 327.

198 Mass. 434.

1909, 490, Part I, § 76.

1911, 242.

Appeal to county commissioners.
1785, 50.
§§ 9, 10.
R. S. 7,
§§ 39, 40.
1853, 319, § 3.
1857, 306, § 3.
G. S. 11,
§§ 45, 46.
P. S. 11,
§§ 71, 72.
1882, 218.
8 Cush. 55.
6 Allen, 131.
114 Mass. 224.
152 Mass. 372.
596.
155 Mass. 313.
159 Mass. 383.
182 Mass. 298.

Exemption and Apportionment.

SECTION 216. No taxes shall be assessed in a city or town for state, county or town purposes, upon the shares in the capital stock of a railroad corporation for any year for which it pays to the treasurer and receiver general a tax on its corporate franchise. Such proportion of the tax collected of each railroad corporation as corresponds to the proportion of its stock owned by persons residing in this commonwealth shall be distributed, credited and paid to the several cities and towns, in which, from the returns or other evidence, it appears that such persons resided on the preceding first day of [May,] April, according to the number of shares so held in such cities and towns respectively. If stock is held by co-partners, guardians, executors, administrators or trustees, the proportion of tax corresponding to the amount of stock so held shall be credited and paid to the cities and towns where the stock would have been taxed under the provisions of clauses four, five, six and seven of section twenty-three and section twenty-seven of chapter twelve of the Revised Laws. If a city or town owns such stock, a return to said city or town shall be made as if it were owned by persons resident therein.

Exemption from local taxation.
Apportionment.
1864, 208,
§§ 8, 15.
1865, 283, § 15.
1866, 291, § 2.
P. S. 13, § 57.
1887, 228.
1888, 413, § 23.
1898, 417; 578,
§§ 4, 26.
1900, 413, § 5.
1901, 413, § 4.
R. L. 14, § 61.
135 Mass. 569.
139 Mass. 559.
Amended.
1909, 440, § 2.

Revised Laws, Chapter 12, § 23, cl. 4-7, § 27.

SECTION 23. All personal estate, within or without the commonwealth, shall be assessed to the owner in the city or town in which he is an inhabitant on the first day of May, except as provided in chapter fourteen and in the following clauses of this section:—

1839, 139, § 2.	6 Gray, 579.	104 Mass. 587.	132 Mass. 93.
G. S. 11, § 12.	7 Gray, 277.	109 Mass. 270.	135 Mass. 258.
P. S. 11, § 20.	9 Gray, 433.	112 Mass. 384.	137 Mass. 332.
1 Met. 242, 250.	13 Gray, 488.	124 Mass. 143.	158 Mass. 461.
4 Met. 181.	16 Gray, 292, 337.	125 Mass. 348.	1902, 342, § 1.
10 Cush. 65.	9 Allen, 246.	126 Mass. 161, 166.	1909, 439, § 1.
11 Cush. 362.	14 Allen, 366.	131 Mass. 424.	1909, 440, § 2.
3 Gray, 494.	103 Mass. 279.		

Assessment of personal estate.
1830, 151, § 2.
R. S. 7,
§§ 9, 10.

Fourth, Personal property belonging to persons under guardianship shall be assessed to the guardian in the city or town of which the ward is an inhabitant unless the ward resides and has his home without the

Property of persons under guardianship.
R. S. 7, § 10,
cl. 4.

1855, 106.
1859, 258.
G. S. 11, § 12,
cl. 4.

Trust

property.
R. S. 7, § 10,
cl. 5.
G. S. 11, § 12,
cl. 5.
P. S. 11, § 20,
cl. 5.
1894, 490.
5 Cush. 93.
6 Gray, 132.
6 Allen, 277.
105 Mass. 528.
124 Mass. 194.
140 Mass. 346.
145 Mass. 111.
147 Mass. 431.
165 Mass. 287.

Personal
property held
as an accumu-
lating fund.
R. S. 7, § 10,
cl. 6.
G. S. 11, § 20,
cl. 6.
P. S. 11, § 20,
cl. 6.

— of

decedents.
R. S. 7, § 10,
cl. 7.
1848, 235.
1852, 234.
G. S. 11, § 12,
cl. 7.
1878, 189, § 2.
P. S. 11, § 20,
cl. 7.
5 Pick. 236.
4 Cush. 1.
6 Allen, 277.
97 Mass. 322.
102 Mass. 348.
123 Mass. 376.
149 Mass. 63.
154 Mass. 143.

Partners,

how taxed.
R. S. 7, § 13.
1859, 114.
G. S. 11, § 15.
P. S. 11, § 24.
9 Cush. 298.
7 Gray, 132.
14 Allen, 366.
105 Mass. 526.
111 Mass. 322.

Tax commis-
sioner to deter-
mine amounts
due to cities
and towns.

1865, 283, § 15.
P. S. 13, § 58.
1898, 578.
§§ 4, 5.
R. L. 14, § 62.
212 Mass. 437.

commonwealth, in which case it shall be taxed to the guardian in the city or town of which he is an inhabitant. P. S. 11, § 20, cl. 4.

2 Gray, 494. 4 Allen, 462. 105 Mass. 528. 145 Mass. 111.

Fifth, Personal property held in trust by an executor, administrator or trustee, the income of which is payable to another person, shall be assessed to the executor, administrator or trustee in the city or town in which such other person resides, if within the commonwealth; and if he resides out of the commonwealth it shall be assessed in the place where the executor, administrator or trustee resides; and if there are two or more executors, administrators or trustees residing in different places, the property shall be assessed to them in equal portions in such places, and the tax thereon shall be paid out of said income. If the executor, administrator or trustee is not an inhabitant of the commonwealth, it shall be assessed to the person to whom the income is payable, in the place where he resides, if it is not legally taxed to an executor, administrator or trustee under a testamentary trust in any other state.

Sixth, Personal property placed in the hands of a corporation or individual as an accumulating fund for the future benefit of heirs or other persons shall be assessed to such heirs or persons, if within the commonwealth, otherwise to the person so placing it, or his executors or administrators, until a trustee is appointed to take charge of such property or of the income thereof. 13 Allen, 267. 121 Mass. 351.

123 Mass. 355. 124 Mass. 193. 147 Mass. 427.

Seventh, Personal property of deceased persons shall be assessed in the city or town in which the deceased last dwelt. Before the appointment of an executor or administrator it shall be assessed in general terms to the estate of the deceased, and the executor or administrator subsequently appointed shall be liable for the tax so assessed as though assessed to him. After such appointment it shall be assessed to such executor or administrator for three years or until it has been distributed and notice of such distribution has been given to the assessors stating the name and residence of the several parties interested in the estate who are inhabitants of the commonwealth and the amount paid to each. After three years from the date of such appointment it shall be assessed according to the provisions of clause five of this section.

161 Mass. 9. 176 Mass. 77.

SECTION 27. Partners, whether residing in the same or in different cities or towns, may be jointly taxed under their firm name, in the place where their business is carried on, for all the personal property employed in such business, except ships or vessels. If partners have places of business in two or more towns, they shall be taxed in each of such places for the proportion of property employed therein. If so jointly taxed, each partner shall be liable for the whole tax.

125 Mass. 351. 133 Mass. 499. 140 Mass. 346. 172 Mass. 383, 464.
130 Mass. 144. 137 Mass. 227. 163 Mass. 444.

SECTION 217. The tax commissioner shall, subject to appeal to the board of appeal, ascertain and determine the amount due to each city and town under the provisions of the preceding section, notify the treasurer of each city and town thereof, and certify the amount as finally determined to the treasurer and receiver general, who shall thereupon pay over the same.

Acts of 1909, Chapter 490, Part III, §§ 39, 40.

TAXATION OF CORPORATE FRANCHISES.

SECTION 39. The term "domestic business corporation" as used in this act shall mean every corporation of the classes enumerated in section one of chapter four hundred and thirty-seven of the acts of the year nineteen hundred and three; the term "foreign corporation" shall mean every corporation, association or organization of the classes enumerated in section fifty-eight of said chapter.

SECTION 40. Every corporation organized under the general or special laws of the commonwealth for purposes of business or profit, having a capital stock divided into shares, except banks, whose shares are otherwise taxable under the provisions of this part, in addition to all returns required by its charter, and in addition to all returns otherwise required under the provisions of this part, shall annually, between the first and tenth days of [May,] *April* make a return to the tax commissioner, under oath of its treasurer, stating the name of the corporation, its place of business, and setting forth as of the first day of [May] *April* of the year in which the return is made:—

First, The total authorized amount of the capital stock of the corporation; the amount issued and outstanding and the amount then paid thereon; the classes, if any, into which it is divided; the par value and number of its shares; the market value of the shares of its stock, or of each class of its stock, if there are two or more classes.

Second, A statement in such detail as the tax commissioner may require of the works, structures, real estate, machinery, underground conduits, wires and pipes, owned by said corporation and subject to local taxation within the commonwealth, and of the location and value thereof; and, in the case of domestic business corporations, of the merchandise and other assets belonging to the corporation within and without the commonwealth.

Third, And [except as to street railway companies] a complete list of the shareholders of the corporation, their residences, and the amount and class of stock, if more than one, belonging to each. If stock is held as collateral security, the list shall state the name and residence of the pledgor and of the pledgee.

Railroad corporations and telegraph, street railway, and electric railroad companies, whether chartered or organized in this commonwealth or elsewhere, shall also state in their return the whole length of their lines and so much of the length of their lines as is without the commonwealth; electric railroad companies shall also return so much of their line as is constructed on private land; street railway and electric railroad companies shall also state in their return the length of track operated by them in each city or town on the [thirtieth day of September] *thirty-first day of March* preceding the return, to be determined by measuring as single track the total length of all tracks operated by them, including sidings and turn-outs, whether owned or leased by them or over which they have trackage rights only, and the amount of dividends paid on their capital stock during the year ending on [such preceding thirtieth day of September,] *the thirtieth day of September preceding the return* and during each year from the organization of the company. Telephone companies organized under the general or special laws of this commonwealth, and manufacturing, owning, using, selling or licensing others to use telephones or other apparatus or appliances pertaining thereto wholly or partially within this commonwealth, and all such companies incor-

Definitions.
1910, 385, 456,
650.

Annual returns
to tax com-
missioner.
1864, 208,
§§ 2, 3.
1865, 283, § 3.
1880, 117, § 2.
1885, 238, § 1.
1886, 270.
1888, 413, § 24.
1898, 417;
578, § 2.
R. L. 14, § 37.
1902, 342, § 2.
1903, 437, § 48.
1906, 463,
Part II., § 211,
Part III.,
§ 125; 516,
§ 14.
12 Allen, 75.
98 Mass. 25.
139 Mass. 561.
144 Mass. 598.
146 Mass. 408.
157 Mass. 70.
179 Mass. 15.
207 Mass. 586,
522, 523.
[1 Op. A. G.
278.]
Amended.
See 1911, 379.
457, § 1.
See 1912, 695.

Amended,
1912, 124,

Amended,
1912, 457.

porated without the commonwealth for the purpose of establishing, owning or licensing others to use such telephones, apparatus or appliances, but having in use within it any of their lines or telephones, shall also state in their return, in such form as the tax commissioner may require, the facts necessary to ascertain the deductions authorized by the following section. Such domestic companies may annually, between the first and tenth days of [May,] *April* make a return to the tax commissioner, signed and sworn to by their president, treasurer and clerk, specifying the amount and market value of all stocks in other corporations held by them upon which a tax has been assessed and actually paid either in this or in any other state for the year preceding the date of said return; and the books, accounts and papers of such corporations shall be examined by the tax commissioner so far as may be necessary for the verification of said return. Other corporations required to make a return under the provisions of this section shall also state therein the amount, value and location of all works, structures, real estate, machinery, underground conduits, wires and pipes owned by them and subject to local taxation without the commonwealth. Such return shall be filed by the tax commissioner, and shall, in the case of said domestic business corporations, be open only to the inspection of the tax commissioner, his clerks and assistants, and such other officers of the commonwealth as may have occasion to inspect it for the purpose of assessing or collecting taxes.

Acts of 1912, Chapter 124.

An Act relative to Returns of Street Railway Companies filed in the Office of the Tax Commissioner.

1909, 490,
Part III., § 40,
cl. 3, amended.

Clause Third of section forty of Part III of chapter four hundred and ninety of the acts of the year nineteen hundred and nine is hereby amended by striking out the words "except as to street railway companies", in the first line, — so that the first paragraph of the said clause will read as follows:—Third, And a complete list of the shareholders of the corporation, their residences, and the amount and class of stock, if more than one, belonging to each. If stock is held as collateral security, the list shall state the name and residence of the pledgor and of the pledgee. [*Approved February 20, 1912.*]

Acts of 1912, Chapter 457.

An Act relative to Tax Returns of Street Railway Companies.

1909, 490,
Part III., § 40,
amended.

SECTION 1. The last paragraph of section forty of Part III of chapter four hundred and ninety of the acts of the year nineteen hundred and nine, as amended by chapter three hundred and seventy-nine of the acts of the year nineteen hundred and eleven, is hereby further amended by striking out the words "thirtieth day of September", in the tenth line, and inserting in place thereof the words:—thirty-first day of March,— and also by striking out the words "such preceding thirtieth day of September", in the sixteenth and seventeenth lines, and inserting in place thereof the words:— the thirtieth day of September preceding the return,— so that the said paragraph will read as follows: [*For paragraph as amended, see above.*]

Acts of 1909, Chapter 490, Part III, §§ 41–43.

VALUATION OF CORPORATE FRANCHISES.

Valuation of
corporate
franchise, etc.
Deductions.
1864, 208,
§§ 5, 6.

SECTION 41. The tax commissioner shall ascertain from the returns or otherwise the true market value of the shares of each corporation subject to the requirements of the preceding section, and shall estimate therefrom the fair cash value of all of said shares constituting its capital

stock on the preceding first day of May, which, unless by the charter of a corporation a different method of ascertaining such value is provided, shall, for the purposes of this part, be taken as the true value of its corporate franchise. From such value there shall be deducted:

First, In case of a railroad corporation, or telegraph, street railway or electric railroad company, whether chartered or organized in this commonwealth or elsewhere, so much of the value of its capital stock as is proportional to the length of that part of its line, if any, lying without the commonwealth; and also the value of its works, structures, real estate, machinery, underground conduits, wires and pipes, subject to local taxation within the commonwealth.

Second, In case of such a domestic telephone company, the amount and market value of all stock in other corporations held by it upon which a tax has been paid in this or other states for the twelve months last preceding the date of the return; and in case of such a foreign telephone company, so much of the value of its capital stock as is proportional to the number of telephones used or controlled by it or under any letters patent, owned or controlled by it without the commonwealth. In case of a telephone company, whether chartered or organized in this commonwealth or elsewhere, the value of its works, structures, real estate, machinery, underground conduits, wires and pipes, subject to local taxation within the commonwealth.

Third, In case of a domestic business corporation, the value of the works, structures, real estate, machinery, poles, underground conduits, wires and pipes owned by it within the commonwealth subject to local taxation, and of securities which if owned by a natural person resident in this commonwealth would not be liable to taxation; also the value of its property situated in another state or country and subject to taxation therein; but the tax commissioner in determining for the purposes of taxation the value of the corporate franchise of any such corporation shall not take into consideration any debts of such corporation unless the returns required from it contain a statement duly signed and sworn to, setting forth that no part of such debts was incurred for the purpose of reducing the amount of taxes to be paid by it.

Fourth, In case of corporations subject to the requirements of the preceding section, other than railroad corporations, telegraph, telephone, street railway and electric railroad companies, whether chartered or organized in this commonwealth or elsewhere, and of domestic business corporations, the value as found by the tax commissioner of their works, structures, real estate, machinery, underground conduits, wires and pipes, subject to local taxation wherever situated.

For the purposes of this section the tax commissioner may take the value at which such works, structures, real estate, machinery, poles, underground conduits, wires and pipes are assessed at the place where they are located as the true value, but such local assessment shall not be conclusive of the true value thereof.

SECTION 42. The tax commissioner may require a corporation to prosecute an appeal from the valuation of its works, structures, real estate, machinery, poles, underground conduits, wires and pipes by the assessors of a city or town, either to the county commissioners or to the superior court, whose decision shall be conclusive upon the question of value. Upon such an appeal the tax commissioner may be heard, and in the superior court costs may be awarded as justice requires.

1906, 463, Part II., § 213, Part III., § 127; 516, § 16.

SECTION 43. Every corporation subject to the provisions of section forty shall annually pay a tax upon its corporate franchise, after mak-

1865, 283,
 §§ 4, 5.
 1880, 117, § 2.
 P. S. 13,
 §§ 39, 40.
 1885, 238, § 1.
 1886, 270.
 1898, 417.
 R. L. 14, § 38.
 1902, 342, § 3.
 1903, 437, § 72.
 1906, 463.
 Part II., § 212,
 Part III.,
 § 126; 516, § 15.
 1907, 395.
 13 Allen, 391.
 98 Mass. 19,
 25.
 100 Mass. 184,
 399.
 125 Mass. 568.
 137 Mass. 80.
 139 Mass. 561.
 144 Mass. 598.
 145 Mass. 528.
 146 Mass. 408.
 152 Mass. 372.
 157 Mass. 70.
 167 Mass. 522.
 178 Mass. 469.
 207 Mass. 386.
 212 Mass. 40,
 42, 169, 160,
 162.
 163 U. S. 1.

Amended. See
 1910, 270, and
 1912, 491.

Corporation
 to appeal from
 local valuation,
 when.
 1865, 283, § 6.
 P. S. 13, § 41.
 1890, 127, § 7.
 1898, 417.
 R. L. 14, § 39.
 1902, 342, § 4.
 1903, 437, § 73.

Tax to be paid
 on corporate
 franchise.

Rate, how determined.
 1864, 208, § 5.
 1865, 283, § 5.
 1880, 117, § 2.
 P. S. 13, § 40.
 1885, 238, § 1.
 1886, 270.
 1888, 413, § 24.
 1898, 417.
 R. L. 14, § 40.
 1903, 437, § 74.
 1904, 261, § 1.
 1906, 271, §§ 9, 12, 463.
 Part II., § 214,
 Part III., § 128;
 516, § 17.
 12 Allen, 75,
 298.
 98 Mass. 19,
 25.
 99 Mass. 146,
 151.
 105 Mass. 527.
 135 Mass. 569.
 137 Mass. 80.
 139 Mass. 561.
 146 Mass. 408.
 157 Mass. 70.
 167 Mass. 522.
 179 Mass. 15.
 192 Mass. 129.
 195 Mass. 385,
 528.
 6 Wallace, 632.
 178 U. S. 120.
 207 Mass. 336,
 522.
 212 Mass. 40,
 42, 159, 161.

ing the deductions provided for in section forty-one, at a rate equal to the average of the annual rates for three years preceding that in which such assessment is laid, the annual rate to be determined by an apportionment of the whole amount of money to be raised by taxation upon property in the commonwealth during the same year, as returned by the assessors of the several cities and towns under the provisions of section ninety-three of Part I, after deducting therefrom the amount of tax assessed upon polls for the preceding year, as certified to the tax commissioner, upon the aggregate valuation of all cities and towns for the preceding year, as returned under sections fifty-nine and sixty of Part I; but the said tax upon the value of the corporate franchise of a domestic business corporation, after making the deductions provided for in section forty-one, shall not exceed a tax levied at the rate aforesaid upon an amount, less said deductions, twenty per cent in excess of the value, as found by the tax commissioner, of the works, structures, real estate, machinery, underground conduits, wires and pipes, and merchandise, and of securities which if owned by a natural person resident in this commonwealth would be liable to taxation; and the total amount of tax to be paid by such corporation in any year upon its property locally taxed in this commonwealth and upon the value of its corporate franchise shall amount to not less than one tenth of one per cent of the market value of its capital stock at the time of said assessment as found by the tax commissioner. If the return from any city or town is not received prior to the twentieth day of August, the amount raised by taxation in said city or town for the preceding year, as certified to the secretary of the commonwealth, may be adopted for the purpose of this determination.

Acts of 1909, Chapter 490, Part III, §§ 72-79.

EXPRESS COMPANIES.

Taxation of express companies, annual return to tax commissioner.
 1907, 586, § 1.
 1908, 194,
 §§ 1, 3.
 212 Mass. 40,
 42.

SECTION 72. Every person, company, partnership or association doing an express business on any railroad, railway, steamboat or vessel in the commonwealth, shall annually, between the first and tenth days of May, make a return to the tax commissioner, signed and sworn to, in the case of a corporation or association by its treasurer or other financial officer, in the case of a partnership by a member of the firm, and in the case of an individual by the person carrying on the business, stating the name of the person, company, partnership or association, and setting forth as of the first day of May in the year in which the return is made:—

First. The total amount of the outstanding capital of the person, company, partnership or association; the classes of stock, if any, into which it is divided; the par value and number of the shares; the market value of its shares and of each class thereof, if there are two or more classes.

Second. The amount and par and market value of all bonds issued by such person, company, partnership or association, together with the amount of the unfunded debt, if any, and such analysis as the tax commissioner may require of the purposes for which said unfunded debt was incurred.

Third. A statement in such detail as the tax commissioner may require of the real estate, machinery, merchandise and other property belonging to the person, company, partnership or association, together with the location and value thereof and the amount of taxes paid thereon to the various cities and towns in the commonwealth for the twelve months preceding said first day of May; also the gross earnings within the commonwealth, and the total gross earnings for the twelve months preceding said first day of May, and securities not liable to taxation, with the value

thereof. Such return shall be filed with the tax commissioner, and shall be open only to the inspection of the tax commissioner, his clerks and assistants, and such other officers of the commonwealth as may have occasion to inspect it for the purpose of assessing or of collecting taxes.

SECTION 73. If such person, company, partnership or association fails to file said return before the tenth day of May of each year, the tax commissioner shall give notice by mail, postage prepaid, to such person, company, partnership or association of the default. If the return is not filed within thirty days after such notice of default has been given, the party in default shall forfeit to the commonwealth not less than five nor more than ten dollars for each day for fifteen days after the expiration of the said thirty days, and not less than ten nor more than two hundred dollars for each day thereafter during which such default continues.

Notice of failure to make return.
Penalty.
1907, 586, § 2.

SECTION 74. Penalties or forfeitures incurred by failure to comply with the provisions of the preceding sections may be recovered in an action brought in the county of Suffolk in the name of the commonwealth, or may be recovered by an information in equity in the name of the attorney-general, at the relation of the tax commissioner, brought in the supreme judicial court in the county of Suffolk. Upon such information, the court may issue an injunction restraining the further prosecution of the business of the person, company, partnership or association named therein until such penalties or forfeitures, with interest and costs, have been paid, and until the return required by section seventy-two has been filed.

Forfeitures, how recovered.
1907, 586, § 3.

SECTION 75. The tax commissioner shall ascertain from the returns or otherwise the true market value of the shares and bonds of every such person, company, partnership or association, and such part of the unfunded debt as he may determine to have been incurred for the purposes of construction or permanent equipment or improvement, and shall estimate therefrom the fair cash value of all the said shares, bonds and unfunded debt as herein specified, constituting its capital on the preceding first day of May.

Tax commissioner to estimate value of capital.
1907, 586, § 4.

SECTION 76. The tax commissioner shall thereupon in each year levy an excise tax upon every such person, company, partnership or association, upon the fair cash value of such proportion of his or its capital, bonds and unfunded debt determined as above, after deducting therefrom the value of the real estate, machinery, merchandise and other property belonging to the person, company, partnership or association, within the commonwealth and subject to taxation in the various cities and towns thereof, together with the value of securities owned by him or it and not liable to local taxation, as the gross earnings of the said person, company, partnership or association within the state, bear to his or its total gross earnings, at a rate equal to the average of the annual rates for the three years preceding that in which the assessment is made, the annual rate to be determined by an apportionment of the whole amount of money to be raised by taxation upon property in the commonwealth during the same year as returned by the assessors of the several cities and towns under the provisions of section ninety-three of Part I, after deducting therefrom the tax assessed upon polls for the preceding year, as certified to the secretary of the commonwealth, upon the aggregate valuation of all cities and towns for the preceding year as returned under sections fifty-nine and sixty of Part I.

Excise tax, how levied.
1907, 586, § 5.
212 Mass. 40, 42.

For the purposes of this section the tax commissioner may take the value at which the real estate, machinery, merchandise and other property are assessed at the place where they are located as the true value, but such local assessment shall not be conclusive of the true value thereof. The tax commissioner may require the person, company, partnership or

association to prosecute an appeal from the valuation of the real estate, machinery, merchandise or other property by the assessors of the city or town either to the county commissioners or to the superior court, whose decision shall be conclusive upon the question of value. Upon such appeal the tax commissioner may be heard, and in the superior court costs may be awarded as justice requires.

Notice to be given of amount of tax. 1907, 586, § 6.

SECTION 77. The tax commissioner shall annually, as soon as may be after the first Monday of August, give notice to every such person and to the treasurer of every such company, partnership or association which is liable to taxation under the provisions of the preceding section of the amount thereof; that it will be due and payable to the treasurer and receiver general within thirty days after the date of such notice, but not before the twentieth day of October; and that, within ten days after the date of such notice, the person, company, partnership or association may apply for a correction of said tax and be heard thereon by the board of appeal authorized by the provisions of section sixty-eight of this part.

Assessors to make return to tax commissioner. 1907, 586, § 7.

SECTION 78. Assessors shall annually on or before the first Monday in August return to the tax commissioner a list of the real estate, merchandise and other property of the persons, concerns or companies doing an express business as aforesaid, and in such form and detail as the tax commissioner may require, with the value thereof on the first day of May preceding and the amount at which the same are assessed in said city or town for the year then current. If the assessors neglect to comply with the requirements of this section, each assessor so neglecting shall forfeit one hundred dollars.

To submit books to inspection and officers to examination. 1908, 194, § 2.

SECTION 79. Every person, partnership, association or domestic corporation which is subject to taxation under the provisions of section seventy-six shall, when so required, submit its books to the inspection of the tax commissioner, and its treasurer, directors or other officers to examination on oath relative to all matters affecting the determinations to be made by said commissioner.

LIENS FOR LABOR AND MATERIALS.

Action against owner of railroad for labor and materials. 1873, 353, § 1. P. S. 112, § 143. R. L. 111, § 164. 115 Mass. 580. 121 Mass. 510. 204 Mass. 507.

SECTION 218. A person to whom a debt is due for labor performed or for materials furnished and actually used in constructing a railroad under a contract with a person other than the railroad corporation, who has authority from or is rightfully acting for such corporation in furnishing such labor or materials shall have a right of action against such corporation to recover such debt with costs, except as provided in the four following sections.

Contractor not to have such action. 1873, 353, § 2. P. S. 112, § 144.

SECTION 219. A person who has contracted to construct the whole or a specified part of such railroad shall not have such right of action. R. L. 111, § 165. 204 Mass. 507.

Statement of amount of debt to be filed. 1873, 353, § 3. P. S. 112, § 145. R. L. 111, § 166. 127 Mass. 101. 204 Mass. 507.

SECTION 220. A person shall not have such right of action for labor performed, unless, within thirty days after ceasing to perform it, he files in the office of the clerk of a city or town in which any of said labor was performed a written statement, under oath, of the amount of the debt so due to him and of the name of the person or persons for whom and by whose employment the labor was performed. Such right of action shall not be lost by a mistake in stating the amount due; but the claim-

ant shall not recover as damages a larger amount than is named in said statement as due to him, with interest thereon.

SECTION 221. A person shall not have such right of action for materials furnished, unless, before beginning to furnish them, he files in the office of the clerk of the city or town in which any of the materials were furnished a written notice of his intention to claim such right, in the manner provided for filing the statement named in the preceding section.

Notice of intention to be filed.
1873, 353, § 4.
P. S. 112, § 146.
R. L. 111, § 167.
204 Mass. 507.

SECTION 222. Such action shall not be maintained unless it is begun within sixty days after the plaintiff ceased to perform such labor or to furnish such materials.

Limitation of actions.
1873, 353, § 5.
P. S. 112, § 147.

R. L. 111, § 168.

127 Mass. 101.

204 Mass. 507.

CHANGE OF NAME.

SECTION 223. Upon the application of any railroad corporation, authorized by a vote of two thirds of the stockholders present and voting at a meeting called for the purpose, the board of railroad commissioners may, after public notice and a hearing, authorize such corporation to change its name.

Change of name.
1891, 360,
§§ 1, 2, 6.
1892, 198, 201.
1895, 104.
1898, 474, § 9.
1899, 164; 442,
§ 9.

1901, 422, § 9.

R. L. 109, § 9.

SECTION 224. A certified copy of such authorization and a certificate of the vote of the corporation, signed and sworn to by the president, treasurer and a majority of the directors, shall be filed in the office of the secretary of the commonwealth. The board of railroad commissioners shall require public notice to be given of the change so authorized; and upon receipt of proof thereof the secretary of the commonwealth may grant a certificate of the name which the corporation shall bear, which, subject to the provisions of section fourteen, shall thereafter be its legal name.

— certificate of, to be filed with secretary.
1891, 360,
§§ 3, 6.
R. L. 109, § 10.

SECTION 225. A railroad corporation shall have the same rights, powers and privileges, and be subject to the same duties, obligations and liabilities, under its new name as before its name was changed, and may sue and be sued by its new name; but any action brought against it by its former name shall not be defeated on that account, and, on motion of either party, the new name may be substituted therefor.

Rights and liabilities under new name.
1891, 360, § 4.
R. L. 109, § 11.

DISSOLUTION.

SECTION 226. If a majority in interest of the stockholders of a railroad corporation desire to close its affairs, they may file a petition therefor in the supreme judicial court or the superior court, setting forth in substance the grounds of their application, and the court, after notice to parties interested and a hearing, may decree a dissolution of said corporation. A corporation so dissolved shall be held to be extinct in all respects as if its corporate existence had expired by its own limitation.

Dissolution of corporations.
1852, 55,
§§ 1, 3.
G. S. 68, § 35.
P. S. 105, § 40.
R. L. 109, § 52.
7 Gray, 119,
393.
9 Gray, 34.
13 Allen, 497.
99 Mass. 267.
119 Mass. 447.

SECTION 227. Every railroad corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is

Continuation for three years to close concerns.
1819, 43.

R. S. 44, § 7.
 G. S. 68, § 36.
 P. S. 105, § 41.
 R. L. 109, § 53.
 16 Mass. 245.
 22 Pick. 180.
 23 Pick. 345.
 123 Mass. 32.
 161 Mass. 443.
See 1910, 187.

Receivers.
 1833, 145.
 R. S. 44, §§ 8, 9.
 1852, 55, § 2.
 G. S. 68, §§ 37,
 38.
 P. S. 105, §§ 42,
 43.
 1884, 203.
 R. L. 109, § 54.
 157 Mass. 81.
See 1910, 187.

— to pay debts
 and distribute
 surplus.
 1833, 145.
 R. S. 44, § 10.
 1852, 55, § 2.
 G. S. 68, § 39.
 P. S. 105, §§ 44,
 R. L. 109, § 55.
 1 Gray, 382.

Surrender of
 certificate of
 incorporation.
 1898, 502.
 R. L. 109, § 56.

Returns to
 secretary of
 dissolution.
 1880, 157.
 P. S. 105, § 45.
 R. L. 109, § 57.

terminated in any other manner, shall nevertheless be continued as a body corporate for three years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it, and of enabling it gradually to settle and close its affairs, to dispose of and convey its property, and to divide its capital stock, but not for the purpose of continuing the business for which it was established.

SECTION 228. If the charter of a railroad corporation expires, or is annulled, or if the corporation is dissolved as provided in section two hundred and twenty-six, or if its corporate existence for other purposes is terminated in any other manner, the supreme judicial court or the superior court, upon application of a creditor or stockholder, shall have jurisdiction in equity to appoint one or more receivers to take charge of its estate and effects, and to collect the debts and property due and belonging to it; with power to prosecute and defend suits in its name or otherwise, to appoint agents under them, and to do all other acts which might be done by such corporation, if in being, which may be necessary for the final settlement of its unfinished business. The powers of such receivers may be continued as long as the court finds necessary for said purposes.

SECTION 229. The receivers shall pay all debts due from the corporation, if the funds in their hands are sufficient therefor; and if they are not, they shall distribute them ratably among the creditors who prove their debts in the manner directed by any decree of the court for that purpose. If there is a balance remaining after the payment of the debts, the receivers shall distribute and pay it to those who are justly entitled thereto as having been stockholders of the corporation, or their legal representatives.

SECTION 230. If a petition, signed and sworn to by a majority in interest of the stockholders of a railroad corporation organized under the general laws, has, with the certificate of incorporation, been filed in the office of the secretary of the commonwealth, stating that such stockholders desire to surrender the certificate of incorporation and to have the corporation dissolved and giving their reasons therefor, the secretary, if he considers such reasons sufficient, shall require the petitioners to publish a notice in one or more newspapers in the county in which the principal office of the corporation is located, that, for reasons which appear to him to be sufficient, the certificate of incorporation of the corporation therein named is annulled. Upon the filing by the petitioner with the secretary of a copy of each newspaper in which the notice of dissolution was ordered to be published, the corporation shall be dissolved, subject to the provisions of the three preceding sections.

SECTION 231. If a railroad corporation is dissolved, the clerk of the court in which the decree for dissolution is entered shall forthwith make return thereof to the secretary of the commonwealth, giving the name of the corporation dissolved, and the date upon which such decree was entered.

OFFENCES AND PENALTIES.

SECTION 232. Whoever without right knowingly stands or walks on a railroad track shall forfeit not less than five nor more than fifty dollars. P. S. 112, § 195. R. L. 111, § 249. 142 Mass. 300.

Walking on track.
1853, 414, § 4.
G. S. 63, § 102.
1874, 372, § 148.

SECTION 233. Whoever without right loiters or remains within a station house of a railroad corporation, or of the Boston Terminal Company, or upon the platform or grounds adjacent to such station, after being requested to leave the same by a police officer or by a railroad police officer, shall forfeit not less than two nor more than twenty dollars.

Loitering in station.
1874, 372,
§ 149.
1878, 180,
§ 1.
P. S. 112, § 196.
R. L. 111, § 250.
1905, 210.

SECTION 234. Whoever, without right, rides or attempts to ride upon a locomotive engine, tender, freight car, caboose, or other conveyance not a part of a passenger train, upon a railroad or upon the property of the Boston Terminal Company, [after being requested to leave the same by an employee of the railroad or of said Boston Terminal Company, or by a police officer,] shall be punished by a fine of not more than fifty dollars or imprisonment for not more than six months. A sheriff, deputy sheriff, constable, police officer, railroad police officer, or officer appointed with the powers of a railroad police officer, upon view of such an offence, may, without warrant, arrest the offender and make complaint against him therefor.

Unlawful riding upon locomotive, etc.
1905, 208.
Amended,
1909, 233.

Acts of 1909, Chapter 233.

An Act further to prohibit Unauthorized Persons from Riding upon a Railroad or upon the Property of the Boston Terminal Company.

SECTION 1. Section two hundred and thirty-four of chapter four hundred and sixty-three, Part II, of the acts of the year nineteen hundred and six prohibiting unauthorized persons from riding upon a railroad or upon the property of the Boston Terminal Company, is hereby amended by striking out the words, "after being requested to leave the same by an employee of the railroad or of said Boston Terminal Company, or by a police officer", in the fifth, sixth and seventh lines, — so as to read as follows: — *Section 234.* [For § 234 as amended, see above.]

1906, 463,
Part II., § 234,
amended.

SECTION 2. This act shall not apply to employees while in the discharge of their duties. [Approved March 31, 1909.]

Not apply to employees, etc.

SECTION 235. Whoever, without the consent of a railroad corporation, or its agent, rides, drives, or leads a horse, or other beast, on the railroad opened for use of such corporation, except in the proper use of a highway or other way, or of a travelled place at a crossing of such railroad therewith upon the same level, shall forfeit not more than one hundred dollars for each offence, and be liable for any damage which results therefrom.

Riding or driving beast on a railroad.
R. S. 39, § 85.
G. S. 63, § 103.
1874, 372
§ 151.
P. S. 112, § 198.
R.L. 111, § 252.

SECTION 236. The person through whose fault or negligence a horse or other beast goes at large within the limits of a railroad opened for use, shall forfeit not more than twenty dollars for each offence, and be liable for any damage which results therefrom. P. S. 112, § 199. R. L. 111, § 253.

Negligence in permitting a beast upon railroad.
R. S. 39, § 86.
G. S. 63, § 104.
1874, 372,
§ 152.

Neglect to close gates at private crossing.
1862, 123.
1874, 372.
§ 183.
P. S. 112, § 200.
R. L. 111, § 254.
Malicious injury to railroad, etc.
R. S. 39, § 77.
G. S. 63, § 105.
1874, 372,
§ 154.
P. S. 112, § 201.
R. L. 111, § 255.
202 Mass. 396.

SECTION 237. Whoever enters upon or crosses a railroad at a private way which is closed by gates or bars, and neglects to close them securely, shall forfeit not less than two nor more than ten dollars for each offence, and be liable for any damage which results therefrom.

SECTION 238. Whoever maliciously injures a railroad, or anything pertaining thereto, or any materials or implements for the construction or use thereof, or aids or abets in such trespass, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in jail for not more than one year, or by both such fine and imprisonment, and shall for each offence forfeit to the use of the corporation treble the amount of damages which it has sustained thereby.

Acts of 1906, Chapter 165.

An Act to prohibit Expectoration in Certain Public Places and Conveyances.

Expectoration in certain public places prohibited.
Amended,
1907, 410.

[SECTION 1. No person shall expectorate or spit on any public sidewalk, or, except in receptacles provided for the purpose, upon the floor in any city or town hall, in any court house or court room, in any public library or museum, in any church or theatre, in any lecture or music hall, in any ferry boat or steamboat, in any railroad car, except a smoking car, in any railway car, in any railroad or railway station or waiting room or on any sidewalk or platform connected therewith.]

Penalty.
Amended,
1907, 410.
See below.

SECTION 2. Whoever violates any provision of this act shall be punished by a fine of not more than twenty-dollars. [Approved March 16, 1906.]

Acts of 1907, Chapter 410

An Act further to prohibit Expectoration in Certain Public Places and Conveyances.

1906, 165, § 1, amended.
Expectoration in certain public places prohibited.
Superseded,
1908, 150.

[SECTION 1. Chapter one hundred and sixty-five of the acts of the year nineteen hundred and six is hereby amended by striking out section one and inserting in place thereof the following:— *Section 1.* No person shall expectorate or spit upon any public sidewalk, or upon any place used exclusively or principally by pedestrians, or, except in receptacles provided for the purpose, upon the floor in any city or town hall, in any court house or court room, in any public library or museum, in any church or theatre, in any lecture or music hall, in any mill or factory, in any hall of any tenement building occupied by five or more families, in any school building, in any ferry boat or steamboat, in any railroad car, except a smoking car, in any elevated railroad car, except a smoking car, in any street railway car, in any railroad or railway station or waiting room or on any sidewalk or platform connected therewith.]

Section 1. No person shall expectorate or spit upon any public sidewalk or upon any place used exclusively or principally by pedestrians, or, except in receptacles provided for the purpose, in or upon any part of any city or town hall, any court house or court room, any public library or museum, any church or theatre, any lecture or music hall, any mill or factory, any hall of any tenement building occupied by five or more families, any school building, any ferryboat or steamboat, any railroad car, except a smoking car, any elevated railroad car, except a smoking car, any street railway car, any railroad or railway station or waiting room, or on any track, platform or sidewalk connected therewith, and included within the limits thereof.

SECTION 2. Section two of said chapter one hundred and sixty-five is hereby amended by adding at the end thereof the words:— Any person detected in the act of violating any provision of this act may be arrested by any officer authorized to serve criminal process in the place where the offence is committed and kept in custody until he can be taken before a court which has jurisdiction of such offence; and if his name is unknown to the officer who makes the arrest, he may be arrested without a warrant, — so as to read as follows:— *Section 2.* Whoever violates any provisions of this act shall be punished by a fine of not more than twenty dollars. Any person detected in the act of violating any provision of this act may be arrested by any officer authorized to serve criminal process in the place where the offence is committed and kept in custody until he can be taken before a court which has jurisdiction of such offence; and if his name is unknown to the officer who makes the arrest, he may be arrested without a warrant.

1906, 165, § 2, amended.
Penalty, arrest, commitment.

SECTION 3. This act shall take effect upon its passage. [*Approved May 14, 1907.*]

Acts of 1908. Chapter 150.

An Act further to prohibit Expectoration in Certain Public Places and Conveyances.

Section one of chapter one hundred and sixty-five of the acts of the year nineteen hundred and six, as amended by section one of chapter four hundred and ten of the acts of the year nineteen hundred and seven, is hereby further amended by striking out the said section and inserting in place thereof the following:— *Section 1.* [*For § 1 as amended, see above.*]

1906, 165, and 1907, § 410, amended.

SECTION 239. Whoever wilfully obstructs, or aids or abets in obstructing, or wilfully does or causes to be done anything with the intent to obstruct, the passing of an engine or car upon a railroad, or wilfully endangers, or aids or abets in endangering, or wilfully does or causes to be done anything with the intent to endanger, the safety of persons conveyed in or upon the same, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the state prison for not more than twenty years, or by both such fine and imprisonment, and shall for each offence forfeit to the use of the corporation treble the amount of damages which it has sustained thereby.

Obstructing engine or car, etc.
R. S. 39, § 77.
1850, 44.
1852, 186,
§§ 1, 2.
G. S. 63, §§ 105, 106, 107, 108.
1874, 372.
§§ 154, 155,
156, 157.
P. S. 112,
§§ 201, 202,
203, 204.
1890, 332.
R. L. 111,
§§ 255, 256,
257, 258.
109 Mass. 345.

105 Mass. 53.

202 Mass. 396.

SECTION 240. Whoever wilfully and maliciously stops a train on a railroad or causes it to be stopped for the purpose of entering, leaving or wantonly delaying the same shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than one month.

Wilfully stopping train.
1879, 177.
P. S. 112, § 205.
R. L. 111, § 259.
109 Mass. 345.
202 Mass. 396.

SECTION 241. Whoever unlawfully uses, removes or tampers with any tools or appliances carried on the cars of a railroad corporation as required by section one hundred and sixty-eight shall be punished by a fine of not more than one hundred dollars, or by imprisonment for not more than three months, or by both such fine and imprisonment.

Tampering with tools.
1882, 54, § 2.
R. L. 111, § 261.

Revised Laws, Chapter 214, § 2.

Penalty for gaming in railroad car, etc. 1869, 382. P. S. 99, § 4.

SECTION 2. Whoever, in a railroad car, steamboat or other public conveyance, plays at cards, dice or any other game for money or other property, or bets on the sides or hands of those playing, shall for each offence forfeit not more than fifty dollars or be imprisoned for not more than three months. If he is discovered in the act, he may be arrested without a warrant by a sheriff, deputy sheriff, constable or other civil officer, and held in custody, in jail or otherwise, for not more than twenty-four hours, until complaint is made against him for such offence.

Revised Laws, Chapter 212, § 35.

Disorderly conduct in public conveyances. 1883, 102.

SECTION 35. Whoever, in or upon a railroad carriage, steamboat or other public conveyance, is disorderly, or disturbs or annoys travellers in or upon the same by profane, obscene or indecent language, or by indecent behavior, shall be punished by imprisonment for not more than thirty days or by a fine of not more than fifty dollars.

Revised Laws, Chapter 208, § 19.

Breaking and entering railroad car, etc. 1874, 70; 372, § 158. P. S. 203, § 14.

SECTION 19. Whoever breaks and enters, or enters in the night time without breaking, a railroad car, with intent to commit a felony, shall be punished by imprisonment in the state prison for not more than ten years or by a fine of not more than five hundred dollars and imprisonment in the house of correction for not more than two years.

Acts of 1908, Chapter 495.

An Act relative to the Use of Torpedoes and Other Explosives by Railroad and Railway Corporations.

Marking of torpedoes, etc.

SECTION 1. It shall be unlawful for a railroad or railway corporation and for any officer or employee thereof to use or deposit a torpedo or other explosive upon or near the tracks of any railroad or railway for the purpose of signalling or otherwise, unless there is plainly and conspicuously stamped or otherwise permanently marked thereon in a manner approved by the board of railroad commissioners a word or words indicating that such torpedo or other explosive is dangerous.

SECTION 2. This act shall take effect on the first day of October in the year nineteen hundred and eight. [Approved May 5, 1908.]

ACCIDENTS.

Liability to town for personal injury. 1874, 372, § 160. P. S. 112, § 209. R. L. 111, § 264.

SECTION 242. If, upon the trial of an action against a city or town, the plaintiff recovers damages for an injury to his person or property which was caused by reason of a defect in a highway, within the location of a railroad, and if the corporation which owns the railroad is liable for such damages, and has had reasonable notice to defend the action, the city or town may recover such damages and the costs of both plaintiff and defendant in the action from the corporation.

Penalty on engineer, etc., for negligence. 1837, 226, § 7. G. S. 63, § 95. 1874, 372, § 161. P. S. 112, § 210. R. L. 111, § 265.

SECTION 243. If an engineer, fireman or other agent of a railroad corporation is guilty of negligence whereby an injury is done to a person or corporation, he shall be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than twelve months.

SECTION 244. Whoever, having the management of or control of a railroad train while being used for the common carriage of persons, is guilty of gross negligence in or in relation to the management or control thereof, shall be punished by a fine of not more than five thousand dollars or by imprisonment for not more than three years.

Penalty for gross negligence in management of trains.
1853, 418.
G. S. 63, § 96.
1874, 372, § 162.
P. S. 112, § 211.
R. L. 111, § 266.

SECTION 245. If a person is injured in his person or property by collision with the engines or cars of a railroad corporation at a crossing such as is described in section one hundred and forty-seven, and it appears that the corporation neglected to give the signals required by said section, and that such neglect contributed to the injury, the corporation shall be liable for all damages caused by the collision, or to a fine recoverable by indictment as provided in section sixty-three of Part I, or, if the life of a person so injured is lost, to damages recoverable in an action of tort, as provided in said section, unless it is shown that, in addition to a mere want of ordinary care, the person injured or the person who had charge of his person or property was, at the time of the collision, guilty of gross or wilful negligence, or was acting in violation of the law, and that such gross or wilful negligence or unlawful act contributed to the injury.

Liability for damages in case of collision at grade crossings, etc.
1871, 352.
1874, 372, § 164.
1881, 199, §§ 2, 5, 6.
P. S. 112, § 213.
R. L. 111, § 268.
120 Mass. 372.
125 Mass. 64.
129 Mass. 440.
133 Mass. 383, 491.
145 Mass. 286.
146 Mass. 241.
154 Mass. 402.
159 Mass. 493.
163 Mass. 132.
172 Mass. 98.
183 Mass. 393.
186 Mass. 474.
187 Mass. 84.
188 Mass. 127, 547.

208 Mass. 140, 156, 157, 456.
209 Mass. 495.

210 Mass. 179, 243, 305, 307.
212 Mass. 599.

Revised Laws, Chapter 51, § 22.

SECTION 22. A defendant shall not avail himself in defence of any omission to state in such notice the time, place or cause of the injury or damage, unless, within five days after receipt of a notice, given within the time required by law and by an authorized person referring to the injuries sustained and claiming damages therefor, the person receiving such notice, or some person in his behalf, notifies in writing the person injured, his executor or administrator, or the person giving or serving such notice in his behalf, that his notice is insufficient and requests forthwith a written notice in compliance with law. If the person authorized to give such notice, within five days after the receipt of such request, gives a written notice complying with the law as to the time, place and cause of the injury or damage, such notice shall have the effect of the original notice, and shall be considered a part thereof.

Correction of defective notices.
1894, 389.
168 Mass. 251.
1908, 305.

SECTION 246. A railroad corporation shall not be liable to any person for personal injuries which may be caused by the acts or omissions of any persons or companies who do an express business over its railroad or of their servants or agents.

Non-liability for acts of expressmen.
1894, 469, § 3.
R. L. 111, § 269.
170 Mass. 464.

See R. L. 70, § 8.

201 Mass. 579.

SECTION 247. Every railroad corporation shall be liable in damages to a person or corporation whose buildings or other property may be injured by fire communicated by its locomotive engines, and shall have an insurable interest in the property upon its route for which it may be so held liable, and may procure insurance thereon in its own behalf. If it is held liable in damages, it shall be entitled to the benefit of any insurance effected upon such property by the owner thereof, less the cost

Loss by fire caused by engine.
1837, 226, §§ 9, 10.
1840, 85, § 1.
G. S. 63, § 101.
1864, 229, § 34.
1871, 381, § 45.
1874, 372, § 106.
P. S. 112, § 214.
1895, 293.
R. L. 111, § 270.

13 Met. 99.
4 Cush. 288.
16 Gray, 71.
2 Allen, 331.
6 Allen, 87.
8 Allen, 438.
98 Mass. 414.
422.
103 Mass. 583.

of premium and expense of recovery. The money received as insurance shall be deducted from the damages, if recovered before they are assessed; and if not so recovered, the policy of insurance shall be assigned to the corporation which is held liable in damages, and it may maintain an action thereon.

118 Mass. 543.	169 Mass. 398.	181 Mass. 551.	211 Mass. 550.
121 Mass. 134.	171 Mass. 245.	184 Mass. 150.	213 Mass. 10.
145 Mass. 129.	179 Mass. 524.	165 U. S. 1.	See 1907, 431.

Acts of 1907, Chapter 431.

An Act to provide for the Better Protection from Fire of Woodlands adjoining Railroads.

Spark ar-
resters for
locomotives.

SECTION 1. Every corporation operating a steam railroad within this commonwealth shall, subject to the approval of the board of railroad commissioners, install and maintain a spark-arrester on every engine in its service in which wood, coke or coal is used as fuel, and shall, between the first day of April and the first day of December in each year, keep the full width of all of its locations over which such engines are operated, to a point two hundred feet distant from the centre line on each side thereof, clear of dead leaves, dead grass, dry brush or other inflammable material, and shall not at any time leave any deposit of fire, hot ashes or live coals upon its locations in the immediate vicinity of woodlands or grass lands, and shall post in stations and other conspicuous places within its location and right of way such notices and warning placards as are furnished to it for the purpose by the state forester: *provided*, that nothing in this section shall be construed to prohibit any railroad corporation from piling or keeping upon its location or right of way cross-ties or other material necessary for the maintenance and operation of its railroad.

Locations to be
cleared of dry
leaves, etc.

Cross-ties.
1909, 394.
1910, 398.

Adjoining land
may be cleared,
notice.

SECTION 2. Any railroad corporation may, upon giving notice according to the provisions of this section, enter upon unimproved land adjoining any location or right of way upon which it operates engines burning wood, coke or coal, and may there at its own expense and subject to the direction of the forest fireward, or the officer or board having his powers, in the city or town in which the land is situated, clear such land of dead leaves, dead grass and dead wood to a distance of one hundred feet from the tracks, without thereby becoming liable for trespass: *provided*, that no railroad corporation shall, under the provisions of this section, do any acts on unimproved land outside its location or right of way, unless it has within two months given fourteen days' notice in writing by mail or otherwise to the occupant of the land, and to the owner thereof, if he resides or has a usual place of business in the city or town in which it is situated, and if the land is unoccupied and the owner does not reside or have a usual place of business in the city or town, then, unless the railroad corporation has within two months published notice of its purpose once in three successive weeks in a newspaper published in the county in which the land is situated, and unless it has within three days given at least twenty-four hours' notice to the forest fireward, or the officer or board having his powers, in the city or town in which the land is situated of the location of the land which it intends to enter under the provisions of this section, and of the time at which it intends to enter the same, and *provided further*, that no notice hereby required shall be valid unless it sets forth the provisions of this section.

Fire signal,
notice.
1906, 463,
Part II., § 148,
not affected.

SECTION 3. Any engineer, conductor or other employee on a train who discovers a fire burning uncontrolled on lands adjacent to the tracks shall forthwith cause a fire signal to be sounded from the engine, which shall consist of one long and three short whistle blasts repeated several

times, and shall notify the next sectionmen whom the train passes, and the next telegraph station, of the existence and location of the fire. The provisions of this section shall not affect the authority conferred upon the board of railroad commissioners by the provisions of section one hundred and forty-eight of Part II of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six.

SECTION 4. Sectionmen or other employees of a railroad corporation who receive notice of the existence and location of a fire burning on land adjacent to the tracks shall forthwith proceed to the fire and shall use all reasonable efforts to extinguish it: *provided*, that they are not at the time employed in labors immediately necessary to the safety of tracks or to the safety and convenience of passengers and the public.

Extinguishing
of fires by
employees.

SECTION 5. Railroad corporations shall inform their employees as to their duties under this act and shall furnish them with the appropriate facilities for reporting and extinguishing such fires.

Facilities, etc.

SECTION 6. Nothing in this act shall be construed to give any railroad corporation power to enter upon, or to interfere in the management or care of, any public park or reservation.

Parks, etc.,
exempted.

SECTION 7. This act shall take effect sixty days after its passage. [Approved May 17, 1907.

Acts of 1909, Chapter 394.

An Act relative to the Liability for the Extinguishment of Forest Fires.

SECTION 1. Any railroad corporation which, by its servants or agents, negligently, or in violation of law, sets fire to grass lands or forest lands shall be liable to any city or town in which such fire occurs, for the reasonable and lawful expense incurred by such city or town in the extinguishment of the fire.

Liability for
extinguishment
of forest fires.

SECTION 2. Cities and towns may recover sums to which they are entitled under the provisions of this act by an action of contract in the superior court. [Approved May 14, 1909.

Cities and
towns may
recover, etc.

BOOKS AND RETURNS.

SECTION 248. A railroad corporation shall keep its books and accounts in the manner prescribed by the board of railroad commissioners, and shall at all times submit its books to the inspection of said board or of any committee of the general court which may be authorized to inspect them; and the directors shall annually, on or before the first Wednesday of September, transmit to the said board a report of their doings for the year ending on the thirtieth day of June preceding, which shall be called the annual return and which shall be sworn to by them and by the treasurer and the chief accounting officer of the corporation. Such return shall state whether any fatal accident or serious injury has occurred to a passenger or other person upon the railroad during the year, and, if so, the cause of such accident or injury and the circumstances under which it occurred; shall set forth copies of all contracts or leases made with other railroad corporations during the year, and specify the receipts and expenditures under the same; and shall include a detailed statement of all particulars relative to the railroad, its business, receipts and expenditures during the year, in such form as shall be prescribed by said board under the provisions

Books, ac-
counts and an-
nual returns.
R. S. 39, § 82.
1837, 226, § 5.
1838, 99, § 2.
1841, 69.
1849, 191,
§§ 1, 4.
1851, 102, § 1.
1854, 423.
1856, 165.
1857, 40, § 5;
168; 240, § 2.
1858, 46, § 8.
G. S. 63,
§§ 132-134.
1862, 135,
§§ 1, 2.
1863, 224, § 1.
1864, 167, § 4.
1869, 419.
1870, 307, § 1;
383.
1871, 381, § 52.
1873, 194.
1874, 372,
§ 171.
1876, 173; 185,
§ 1.
P. S. 112, § 81.
1889, 328, § 1.
R. L. 111, § 83.

of section twenty of Part I. The books of each corporation shall be so kept that returns may be made in exact conformity with the form so prescribed; and the accounts shall be closed on the thirtieth day of June in each year, so that a balance sheet of that date can be taken therefrom and included in the return. Every railroad corporation, which neglects to make said annual return within the time prescribed in this section, or to amend said return within fifteen days, when required by the board of railroad commissioners as provided in said section twenty, shall forfeit, for every such neglect, fifty dollars for each day during which such neglect continues; and if such corporation unreasonably refuses or neglects to make said return, it shall forfeit for every such refusal or neglect not more than five thousand dollars.

Penalty for neglect to make annual return.
 R. S. 39, § 82.
 1851, 102, § 2.
 1857, 40, § 6.
 G. S. 63, § 135.
 1863, 224, § 2.
 1864, 167, § 2.
 1874, 372, § 174.
 P. S. 112, § 84.
 R. L. 111, § 87.

Acts of 1909, Chapter 502, § 1.

An Act relative to Returns to the Board of Railroad Commissioners.

Time for filing annual returns.
 Amended,
 1910, 553.

SECTION 1. The annual returns now required by law to be made to the board of railroad commissioners shall be returns for the year ending on the thirtieth day of June, and shall be transmitted to said board on or before the thirtieth day of the following September, upon blank forms of return to be furnished by the board [on or before the first day of June in each year.] The time within which all returns are required by law to be made to the board may be extended by the board to such date subsequent thereto as it may, for good cause shown, fix in any case.

Acts of 1910, Chapter 558.

An Act relative to Returns to the Board of Railroad Commissioners.

1909, 502,
 amended.

SECTION 1. Section one of chapter five hundred and two of the acts of the year nineteen hundred and nine is hereby amended by striking out the words "on or before the first day of June in each year", in the sixth and seventh lines, so as to read as follows: — *Section 1.* The annual returns now required by law to be made to the board of railroad commissioners shall be returns for the year ending on the thirtieth day of June, and shall be transmitted to said board on or before the thirtieth day of the following September, upon blank forms of return to be furnished by the board. The time within which all returns are required by law to be made to the board may be extended by the board to such date subsequent thereto as it may, for good cause shown, fix in any case.

SECTION 2. This act shall take effect upon its passage. [Approved May 25, 1910.]

Acts of 1909, Chapter 502, § 2.

Returns in the year 1910.

SECTION 2. The return required by the preceding section to be filed for the period ending on the thirtieth day of June, in the year nineteen hundred and ten, shall cover the doings of street railway companies and every person, firm, association or corporation doing an express business upon either a railroad or railway in this commonwealth for the preceding nine months only, and said period of nine months shall be deemed, under the provisions of section sixty-eight of chapter five hundred and ninety of the acts of the year nineteen hundred and eight, subdivision Fifth, relative to the investment of deposits, and the income derived therefrom, of savings banks in the bonds of street railway companies, as one

of the five years therein referred to, but the requirement that dividends equal to at least five per cent upon all the outstanding capital stock of a street railway company shall have been earned and paid in cash in each of said five years, shall not apply to said period of nine months; and any street railway company which shall have earned and paid in dividends in cash an amount equal to five per cent upon all its outstanding capital stock in each of the five preceding years, with the exception of said nine months period, shall be included in the list to be certified and transmitted by the board. The list required by the provisions of said section sixty-eight to be certified and transmitted to the bank commissioner shall, after the passage hereof, be so certified and transmitted on or before the fifteenth day of December in each year.

SECTION 249. Every railroad corporation which operates a railroad within this commonwealth shall, within fifty days after the expiration of each quarter of the calendar year, transmit to the board of railroad commissioners a quarterly statement of its business and financial condition, in such form and with such detail as said board may require, which shall at reasonable times be open to public inspection. A railroad corporation which neglects to comply with the provisions of this section shall forfeit fifty dollars for each day during which such neglect continues.

Quarterly returns.
1889, 241.
1893, 131.
R. L. 111, § 85.

SECTION 250. Every railroad corporation shall, during the continuance of any lease which it has taken of the railroad of another corporation, make all the returns required of the lessor; and during the continuance of such lease, the lessor shall not be required to make such returns, if, when requested by the lessee, the lessor furnishes all the information in its possession needed to make such returns; but if a railroad in this commonwealth is leased to a lessee in another state, the lessors in this commonwealth shall make the annual return.

Lessee of road to make returns required of lessor.
1864, 167, § 3.
1867, 127.
1874, 372, § 173.
P. S. 112, § 83.
R. L. 111, § 86.

Acts of 1911, Chapter 184.

An Act to provide Penalties for wilfully making False Reports to Commissions or Commissioners.

Any person who shall wilfully make false report to the railroad commission, the gas and electric light commission, the highway commission, the insurance commissioner, the bank commissioner or the commissioner of corporations, or who shall testify or affirm falsely to any material fact in any matter wherein an oath or affirmation is required or authorized, or who shall make any false entry or memorandum upon any book, report, paper or statement of any company making report to any of the said commissions or commissioners, with intent in any case to deceive the commission or commissioner, or any agent appointed to examine the affairs of any such company, or to deceive the stockholders or any officer of any such company, or to injure or defraud any such company, and any person who with like intent aids or abets another in any violation of this act shall be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment. [Approved March 25, 1911.]

Penalties for making false reports, etc.

Acts of 1909, Chapter 441.

An Act relative to Voluntary Associations under Written Instruments.

Voluntary associations, etc. Copies of written instruments to be filed.

SECTION 1. Trustees of a voluntary association under a written instrument or declaration of trust the beneficial interest under which is divided into transferable certificates of participation or shares, shall file a copy of such written instrument or declaration of trust with the commissioner of corporations and with the clerk of every city or town in which such association has a usual place of business.

Statements of shares owned, etc., and of stockholders of record to be filed. Amended, 1913, 454.

SECTION 2. Trustees of a voluntary association under a written instrument or declaration of trust the beneficial interest under which is divided into transferable certificates of participation or shares, who own or control a majority of the capital stock of a railroad, street railway, gas company, or electric light company, shall annually on or before the first day of May file with the commissioner of corporations and with the board having supervision of such company a statement showing the number of shares of such company owned or controlled by them and the stockholders of record on the books of such company in whose names such shares are held.

Section 3. Every trustee of a voluntary association under a written instrument or declaration of trust, the beneficial interest under which is divided into transferable certificates of participation or shares, who fails to comply with the requirements of section two of this act shall for such failure be liable to a fine of not more than five hundred dollars or to three months' imprisonment.

Acts of 1913, Chapter 454.

An Act relative to the Filing of Annual Statements by Trustees of Voluntary Associations under Written Instruments or Declarations of Trust.

1909, 441, amended.

Chapter four hundred and forty-one of the acts of the year nineteen hundred and nine is hereby amended by adding at the end thereof the following new section: — *Section 3.* Every trustee of a voluntary association under a written instrument or declaration of trust, the beneficial interest under which is divided into transferable certificates of participation or shares, who fails to comply with the requirements of section two of this act shall for such failure be liable to a fine of not more than five hundred dollars or to three months' imprisonment. [*Approved April 9, 1913.*]

Acts of 1913, Chapter 596.

An Act to provide for Publication of Information relative to Voluntary Associations owning or controlling Public Service Corporations.

Copies of written instruments, etc., filed by voluntary associations owning or controlling public service corporations to be printed as a public document.

SECTION 1. The commissioner of corporations, within thirty days after the passage of this act, shall transmit copies of all written instruments or declarations of trust and of amendments or additions thereto which have been filed in his office, in compliance with section two of chapter four hundred and forty-one of the acts of the year nineteen hundred and nine, to the secretary of the commonwealth, who shall cause the same to be printed as a public document. The commissioner of corporations shall, in the month of December, nineteen hundred and thirteen, and annually thereafter, transmit to the secretary of the commonwealth copies of all written instruments or declarations of trust, and any amendments or additions to such declarations theretofore in the custody of the commissioner, which were filed in his office during the year ending on the thirtieth day of November next preceding in compliance with section two of chapter

four hundred and forty-one of the acts of the year nineteen hundred and nine. The secretary shall annually cause such of said instruments, declarations of trust and amendments as have not been previously printed under his direction, together with such reports and information relating to the associations described in section two of said chapter four hundred and forty-one as the board of railroad commissioners or the board of gas and electric light commissioners may transmit to him for the purpose, to be printed as a public document.

SECTION 2. This act shall take effect upon its passage. [*Approved May 2, 1913.*]

Acts of 1913, Chapter 597.

An Act relative to the Holding of Stock of Certain Public Service Corporations.

SECTION 1. No corporation organized under or subject to the provisions of chapter four hundred and thirty-seven of the acts of the year nineteen hundred and three, except a corporation which by special law of this commonwealth is authorized to hold stock in a public service corporation, shall hereafter purchase or acquire, take or hold, directly or indirectly, more than ten per cent of the total capital stock of a corporation organized under the general or special laws of the commonwealth for the purpose of carrying on within the commonwealth the business of a railroad, street railway, electric railroad, elevated railway, gas or electric light, heat or power company.

Certain corporations not to hold, etc., more than ten per cent of the capital stock of certain public service corporations.

SECTION 2. This act shall take effect upon its passage. [*Approved May 2, 1913.*]

RAILROADS FOR PRIVATE USE.

SECTION 251. A person or corporation may construct a railroad for private use in the transportation of freight; but shall not take or use lands or other property therefor without the consent of the owner thereof. No such railroad shall be connected with the railroad of another corporation without its consent; nor shall it be constructed across or upon a highway, town way or travelled place without the consent of the board of aldermen of the city or selectmen of the town, nor except in a place and manner approved by them. If the board of aldermen or selectmen consent, they shall from time to time make such regulations relative to motive power, rate of speed, and time and manner of using the railroad over and upon such way or travelled place, as in their judgment the public safety and convenience require, and they may order such changes to be made in the track as are rendered necessary by the alteration or repair of such way. If they allow steam power to be used on such railroad, the provisions of this act relative to the crossing of ways and travelled places by railroad corporations shall apply to such railroad, and to the person or corporation constructing or operating the same.

Railroads for private use. 1871, 232. 1874, 372. §§ 175, 176. P. S. 112, §§ 223, 224. R. L. 111, § 279. 156 Mass. 159. 178 Mass. 363. See 1911, 290.

SECTION 252. If the consent of the board of railroad commissioners is required for the crossing of a way or travelled place by a railroad for private use, it may limit the number of tracks, and may impose other conditions relative to the use of the crossing by said railroad, and may modify such limitations and conditions.

Regulation of crossings. 1890, 382. R. L. 111, § 280. Amended. 1912, 375.

The board of railroad commissioners may, upon the complaint of any party interested, or upon its own motion, exercise supervisory powers over all railroads for private use with regard to the character and condition of the roadbed, tracks, crossings, rolling stock, machinery, equipment and appliances used in or in connection with the operation of such railroads, so far as is reasonable and expedient to promote the security of persons employed in the maintenance and operation of the same and of the public.

Acts of 1912, Chapter 375.

An Act relative to the Supervision by the Board of Railroad Commissioners of Railroads for Private Use.

1906, 463,
Part II, § 252,
amended.

Section two hundred and fifty-two of Part II of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby amended by adding at the end thereof the following:— The board of railroad commissioners may, upon the complaint of any party interested, or upon its own motion, exercise supervisory powers over all railroads for private use with regard to the character and condition of the roadbed, tracks, crossings, rolling stock, machinery, equipment and appliances used in or in connection with the operation of such railroads, so far as is reasonable and expedient to promote the security of persons employed in the maintenance and operation of the same and of the public, — so as to read as follows:— *Section 252. [For § 252 as amended, see above.]*

CORPORATIONS TO CONSTRUCT RAILROADS IN FOREIGN COUNTRIES.

Corporation to
construct rail-
roads in for-
eign countries.
1879, 274, § 1.
P. S. 112, § 225.
R. L. 111, § 281.
207 Mass. 187.

SECTION 253. Fifteen or more persons, a majority of whom are inhabitants of this commonwealth, may associate themselves by a written agreement of association, with the intention of forming a corporation to construct and operate a railroad, or railroad and telegraph, in any foreign country, but in accordance with the laws of such country; and, upon complying with the provisions of section two hundred and fifty-five, shall, with their associates and successors, be a corporation for the purpose aforesaid, with the powers necessary and incident thereto, and with such powers and privileges, and subject to such duties, liabilities and restrictions, as to the location, construction, maintenance and operation of its railroad, or railroad and telegraph, and the transfer of its property by mortgage, lease or otherwise as may be fixed by such country.

Agreement of
association.
1879, 274, § 2.
P. S. 112, § 226.
R. L. 111, § 282.

SECTION 254. The agreement of association shall state:—

(a) That the subscribers thereto associate themselves with the intention of forming a railroad corporation, or a railroad and telegraph corporation.

(b) The corporate name assumed.

(c) The termini of the railroad, or the railroad and the telegraph.

(d) The total amount of the capital stock of the corporation.

(e) The names and residences of at least five persons, who shall be subscribers to the agreement of association, to act as directors until others are chosen and qualified in their stead.

Each associate shall subscribe to the agreement of association his name, residence, post office address, and the number of shares of stock which he agrees to take; but no subscriber shall be bound to pay more than ten per cent of the amount of his subscription, unless a corporation is chartered.

SECTION 255. When it is shown to the satisfaction of the board of railroad commissioners that the requirements of the two preceding sections have been complied with, the clerk of said board, upon its order, shall annex to the agreement of association a certificate setting forth that fact. The directors shall thereupon file the agreement of association and certificate in the office of the secretary of the commonwealth, who, upon the payment to him of a fee of fifty dollars, shall receive and preserve the same in form convenient for reference and open to public inspection; and shall thereupon issue a certificate of incorporation substantially in the following form:—

Certificate of compliance with requirements. 1879, 274, § 3. P. S. 112, § 227. R. L. 111, § 283. 207 Mass. 187.

COMMONWEALTH OF MASSACHUSETTS.

Be it known, that whereas [names of the subscribers to the agreement of association] have associated themselves with the intention of forming a corporation, under the name of the [name of the corporation], for the purpose of locating, constructing, maintaining and operating a railroad [or railroad and telegraph] [description of the railroad or railroad and telegraph as in the agreement of association], and have complied with the statutes of this commonwealth in such cases made and provided: Now, therefore, I, _____, secretary of the commonwealth of Massachusetts, do hereby certify that the persons aforesaid, their associates and successors, are legally established as a corporation, under the name of the [name of the corporation], with all the powers and privileges, and subject to all the duties, liabilities and restrictions, set forth in the general laws applicable to such corporations.

Form of certificate.

In witness whereof, I have hereunto subscribed my official signature, and affixed the Great Seal of said commonwealth, this _____ day of _____, in the year _____ [day, month and year].

The secretary of the commonwealth shall sign the certificate of incorporation and cause the Great Seal of the commonwealth to be thereto affixed, and such certificate shall have the force and effect of a special charter. The secretary of the commonwealth shall also cause a record of the certificate of incorporation to be made, and such certificate, or such record, or a certified copy thereof, shall be conclusive evidence of the existence of such corporation.

SECTION 256. The corporation may from time to time, at a meeting of directors called for the purpose, reduce the amount of the capital stock, or increase it for the purpose of constructing and equipping its railroad and extensions or branches thereof. If such increase or reduction is made, a certificate of the fact, signed by the president of the corporation, shall, within thirty days thereafter, be filed in the office of the secretary of the commonwealth. Such corporation may, by vote at a meeting of its directors, purchase, acquire or lease the prop-

Increase or reduction of capital stock. 1879, 274, § 4. P. S. 112, § 228. R. L. 111, § 284. 1904, 169, § 1. 207 Mass. 187.

erty, stocks, bonds or securities of any railroad corporation whose line is located in the foreign country named in the original agreement of association of such corporation or any amendment thereof made as hereinafter provided, or of any steamship company associated in transportation or business with such corporation, upon such terms and for such consideration as shall be determined by such vote, and in like manner may appoint an executive committee from the members of its board, and delegate to such committee such power and authority as by such vote shall be provided, and in like manner may divide the directors into classes as nearly equal as possible for the prescribed number of classes, and prescribe the tenure of office of the several classes, but no class shall be elected for a shorter period than one year or for a longer period than five years, and the term of office of at least one class shall expire at the next annual meeting and thereafter at the end of each year, and at each annual meeting after such division directors shall be elected only to fill the place of those whose term of office shall then expire as so provided and shall hold office for the period so prescribed, and all directors shall hold office until their successors are chosen and qualified; and such corporation may, by vote at an annual or a special meeting of its stockholders, called for the purpose, amend its agreement of association to provide for constructing and operating a railroad in any other foreign country or countries in accordance with the laws of such country or countries, and shall file such amendment in the office of the secretary of the commonwealth and pay him a fee of fifty dollars, and thereupon such corporation shall have the same powers and privileges, and be subject to the same duties, liabilities and restrictions, in all respects, as if its agreement of association had originally contained such amendment.

Statutes governing such corporation.
1879, 274,
§§ 5, 6.
P. S. 112, § 229.
R. L. 111, § 285.
1904, 169, § 2.

SECTION 257. Such corporation shall be subject to the provisions of sections twenty-nine to forty-one, inclusive, forty-three to forty-five, inclusive, and of section fifty-eight, except as otherwise provided herein. 139 Mass. 562. 207 Mass. 187.

Revised Laws, Chapter 14, § 52.

TAXATION OF CORPORATIONS FORMED TO CONSTRUCT RAILROADS IN FOREIGN COUNTRIES.

Return and tax of corporations to construct railroads in foreign countries.
1879, 274, § 6.
P. S. 13, § 46.
1895, 300.
139 Mass. 559.
Repealed.
1903, 437, § 95.

[Corporations now subject to 1903, 437, §§ 71-87.]

[SECTION 52. A corporation formed under the general laws of the commonwealth to construct railroads, or railroads and telegraphs, in foreign countries shall for the purposes of taxation be subject to the provisions of section forty-nine, except that the rate of taxation shall be one-twentieth of one per cent per annum upon the par value of the capital stock, divided into semi-annual payments as provided in said section; but no other provisions of this chapter relative to the assessment of taxes upon corporations or the shareholders therein shall apply thereto. Such corporation shall annually, between the first and tenth days of May, make a return to the tax commissioner, under the oath of its treasurer, of all its shareholders, their residences, the number of shares belonging to each on the first day of May, the amount of its capital stock and the par value and market value of the shares on said first day of May.]

SECTION 258. Chapter one hundred and eleven of the Revised Laws, except section one hundred and fifty-eight thereof, section thirteen of chapter five hundred and forty-four of the acts of the year nineteen hundred and two, chapters fifty-nine and one hundred and sixty-nine of the acts of the year nineteen hundred and four, chapters two hundred and eight and two hundred and ten of the acts of the year nineteen hundred and five, and chapter two hundred and eighty-three of the acts of the year nineteen hundred and six, and, so far only as they apply to railroads or railroad corporations, their officers, agents or employees, sections thirty-seven, thirty-eight, thirty-nine, forty, forty-two, sixty-one and sixty-two of chapter fourteen of the Revised Laws, sections nine, ten, eleven, fifteen, seventeen, twenty, twenty-one, twenty-four, twenty-five, twenty-seven, twenty-eight, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, forty, fifty-two, fifty-three, fifty-four, fifty-five, fifty-six and fifty-seven of chapter one hundred and nine of the Revised Laws, section nineteen of chapter one hundred and ten of the Revised Laws and chapter four hundred and twenty-three of the acts of the year nineteen hundred and three are hereby repealed.

Repeal.
[For R. L. 111,
§ 153, see
p. 31.]

SECTION 259. The provisions of this act, so far as they are the same as those of existing statutes, shall be construed as a continuation thereof, and not as new enactments, and a reference in a statute which has not been repealed to provisions of law which have been wholly or partially revised and re-enacted herein shall be construed as applying to such provisions as so incorporated in this act. The repeal of a law by this act shall not affect any act done, ratified or confirmed, or any right accrued or established, or any action, suit or proceeding commenced under any of the laws repealed before the repeal took effect, or any action, suit or proceeding pending at the time of the repeal for an offence committed, or for the recovery of a penalty or forfeiture incurred, under any of the laws repealed; but the proceedings shall, when necessary, conform to the provisions of this act. Any provision of this act by which a punishment, penalty or forfeiture is mitigated may be extended and applied to any judgment pronounced after said repeal.

Provisions,
how construed,
etc.

Repeal not to
affect pending
actions, etc.

Acts of 1913, Chapter 784, §§ 7, 27, 28, 29.

SECTION 7. Every vote, recommendation and order of the commission shall be entered of record; and the commission shall have an official seal, which shall be judicially noticed. Copies of all official documents and orders filed or deposited in the office of the commission, certified by a member of the commission, or by the secretary, to be true copies of the originals, under the official seal of the commission, shall be evidence in like manner as the originals in all courts of the commonwealth; and the commission may charge and collect for such copies ten cents for each folio. The fees so collected shall be paid into the treasury of the commonwealth.

Records and
official seal.

Certified
copies to be
evidence, etc.

Fees.

SECTION 27. The supreme judicial court shall have jurisdiction in equity to review, annul, modify or amend any rulings or orders of the

Jurisdiction in
equity to
review, annul,

etc., rulings
or orders of
commission.

commission which are unlawful to the extent only of such unlawfulness. The procedure before the said court shall be that prescribed by its rules, which shall state upon what terms the enforcement of the order shall be stayed. The attorney for any party petitioning the supreme judicial court hereunder shall file with the clerk of the court a certificate that he is of opinion that there is such probable ground for the appeal as to make it a fit subject for judicial inquiry, and that it is not intended for delay; and double costs shall be assessed by the court upon any such party whose petition shall appear to the court not to be a fit subject for judicial inquiry or shall appear to be intended for delay. The burden of proof shall be upon the party adverse to the commission to show that its order is invalid. Any proceeding in any court of this commonwealth directly affecting an order of the commission or to which the commission is a party shall have preference over all other civil proceedings pending in such court, except election cases.

Jurisdiction to
enforce orders.

SECTION 28. The supreme judicial court shall have jurisdiction upon the application of the commission to enforce all valid orders of the commission and all the provisions of this act. Whenever the commission shall be of opinion that a common carrier subject to its supervision is failing or omitting or about to fail or omit to do anything required of it by law or by order of the commission, or is doing anything or about to do anything or permitting anything or about to permit anything to be done, contrary to or in violation of the law or of any order of the commission, it shall direct counsel to the commission to begin, subject to the supervision of the attorney-general, an action or proceeding in the supreme judicial court in the name of the commission for the purpose of having such violations or threatened violations stopped and prevented either by mandamus or injunctions.

Construction
of act.

SECTION 29. This act shall be deemed and construed as a remedial act and in enlargement and extension of all previous acts and existing laws conferring upon or vesting in the commission any jurisdiction, powers or discretion with respect to any subject or matter treated in this act. Except as above provided all acts and parts of acts inconsistent with any provision of this act, and all acts and parts of acts which would in any way limit or prevent the exercise of the fullest extent of any of the jurisdiction, powers, authority or discretion delegated herein to the commission are hereby repealed: *provided*, that nothing herein contained shall be construed to repeal, directly or by implication, the provisions of chapter five hundred of the acts of the year eighteen hundred and ninety-seven, or to authorize the commission to make any order or take any action inconsistent with the provisions of said act or with any rights which have been acquired by any common carrier under any statute prior to the passage of this act.

Proviso.

PART III.
OF STREET RAILWAY COMPANIES.

SECTION

1. Matters of construction.
2. Companies subject to the provisions of the chapter.
- 3-9. Formation.
- 10-11. Organization.
- 12-13. Officers.
- 14-20. Meetings.
- 21-29. Capital stock.
- 30-41. Corporate powers.
- 42-50. Land.
- 51-57. Lease or sale of railway.
58. Issue of securities by foreign corporations.
- 59-63. Gas and electricity.
64. Extension of location.
65. Alteration of location.
66. Revocation of location.
- 67-69. Street or highway widening.
- 70-72. State highways.

SECTION

- 73-95. Operation.
- 96-102. Fares and accommodations.
103. Increase of capital stock and issue of bonds.
104. Reduction of capital stock.
- 105-106. Stock and scrip dividends.
- 107-112. Issue of capital stock, bonds, coupon notes and other evidences of indebtedness.
- 113-116. Railroad crossings.
- 117-121. Liens for labor and materials.
- 122-124. Change of name.
- 125-137. Taxation.
- 138-143. Dissolution.
- 144-146. Sale by receivers.
- 147-150. Savings banks.
- 151-155. Books, returns and reports.
- 156-157. Additional remedies.

MATTERS OF CONSTRUCTION.

SECTION 1. In this act, unless the context otherwise requires:

“Street railway” or “railway” means a railroad or railway, including poles, wires or other appliances and equipment connected therewith, of the class operated by motive power other than steam, and usually constructed upon the public ways and places.

“Location” as applied to a street railway, means the grant to a street railway company of the right to construct, maintain and operate a street railway in a public way or place.

“Original”, as applied to a street railway location in a city or town, means the first location granted to the company in such city or town.

“Extension” means any railway constructed by a street railway company in a city or town in addition to that authorized by its original location therein.

“Board of aldermen”, or “selectmen”, includes the board or other authority exercising the powers of a board of aldermen or of selectmen; but nothing herein shall be construed as affecting the veto power of a mayor of any city.

“Public way” means any way laid out by public authority.

SECTION 2. Street railway companies shall be subject to the provisions of Parts I and III. Companies which have been specially chartered shall continue to exercise and enjoy the powers and privileges granted and be subject to all the liabilities imposed by their respective charters, except as modified and controlled by any act in amendment thereof or by the provisions of this act. All street railway companies whether organized under general or special laws shall be subject to any other gen-

Definitions.
1874, 372, § 2.
P. S. 112, § 1.
1892, 110.
1898, 578, § 1.
R. L. 111, § 1.
193 Mass. 308.

Companies
subject to the
provisions of
the chapter.
1864, 229,
§§ 1, 44.
1871, 381,
§§ 1, 58.
1874, 29, § 1.
P. S. 113, § 1.
1898, 578,
§§ 1, 28.
1900, 197, § 4.
R. L. 112, § 1.
12 Allen, 262.

eral laws applicable thereto. All provisions of law which may be in force at the time of the enactment hereof and are applicable to the Boston Elevated Railway Company or to companies whose railways were, on the first day of October in the year eighteen hundred and ninety-eight, leased or operated by it, shall remain in full force and effect in respect of said company and companies.

FORMATION.

Formation of street railway company. 1874, 29, § 1. P. S. 113, § 2.

SECTION 3. Fifteen or more persons may associate themselves by a written agreement of association with the intention of forming a street railway company.

R. L. 112, § 3.

190 Mass. 530.

199 Mass. 284.

Agreement of association.

1863, 100.
1864, 229, § 21.
1871, 381, § 27.
1874, 29,
§§ 2, 3, 4, 7.
1877, 105.
P. S. 113,
§§ 3, 4.
R. L. 109, § 8.
R. L. 112,
§§ 3, 4, 5.
1905, 80.

SECTION 4. The agreement of association shall state:

(a) That the subscribers thereto associate themselves with the intention of forming a street railway company.

(b) The corporate name assumed, which shall be one not in use by any other street railway company in this commonwealth, or, in the judgment of the board of railroad commissioners, so similar thereto as to be likely to be mistaken for it, and which shall contain the words, "street railway company", at the end thereof.

(c) The termini of the railway.

(d) The length of the railway, as nearly as may be.

(e) The name of each county, city and town in which the railway is to be located.

(f) The gauge of the railway, which shall be four feet eight and one half inches.

(g) The total amount of the capital stock of the company, which shall be not less than ten thousand dollars for each mile, unless the railway is to be wholly outside of a city, in which case said stock shall be not less than five thousand dollars for each mile.

(h) The par value of the shares, which shall be one hundred dollars.

(i) The names and residences of at least five persons who shall be subscribers to the agreement of association, to act as directors until others are chosen and qualified in their stead.

Each associate shall subscribe to the agreement of association his name, residence, post office address, and the number of shares of stock which he agrees to take; but no subscriber shall be bound to pay more than ten per cent of the amount of his subscription unless a company is incorporated.

Acts of 1913, Chapter 499.

An Act relative to the Use of Names or Titles of Public Service Corporations.

Use of name or title of public service corporations regulated.

SECTION 1. No person, partnership or association owning, holding or controlling shares of stock of any public service corporation shall hereafter use any name or title or other word or words that, in the opinion of the board of commissioners having jurisdiction over the public service corporations the shares of which are or are to be held, owned or controlled

by such person, partnership or association, might lead the public to believe that such person, partnership or association is a public service corporation or that its business is that of a public service corporation.

SECTION 2. The board of railroad commissioners, in the case of corporations under its jurisdiction, and the board of gas and electric light commissioners, in the case of corporations under its jurisdiction, the shares of which are or are to be held, owned or controlled by any person, partnership or association specified in section one, are hereby authorized to investigate and determine whether any such person, partnership or association is violating the provisions of section one; and any person, partnership, or association violating any provision of section one shall forfeit to the commonwealth one hundred dollars a day for every day or part thereof during which such violation continues after the determination aforesaid. Any violation of the provisions of section one shall forthwith be reported by the board of commissioners to the attorney-general, after said determination and notice thereof to such person, partnership or association. The said forfeiture may be recovered by an information or other appropriate proceeding brought in the supreme judicial court or superior court in the name of the attorney-general. Upon such information or other proceeding the court may issue an injunction restraining such person, partnership or association from further prosecution of its business within the commonwealth during the pendency of such proceeding or for all time, and may make such other order or decree as equity and justice may require.

Certain state boards to investigate and determine violations.

Penalty.

Violations to be reported to attorney-general.

Recovery of forfeiture.

Restraining injunction may issue.

SECTION 3. This act shall not apply to the continued use by any person, partnership, or association, of any name or title which was adopted prior to the passage of this act.

Not to apply to names previously adopted.

SECTION 4. This act shall take effect upon its passage. [Approved April 17, 1913.]

SECTION 5. The directors shall appoint a clerk and a treasurer who shall hold their respective offices until a clerk and a treasurer of the company are chosen and qualified in their stead. The directors shall fill any vacancy in their board, or in the office of clerk or treasurer, before the organization of the company.

Clerk and treasurer; vacancies. 1874, 29, § 4. P. S. 113, § 5. R. L. 112, § 5.

SECTION 6. The directors, before applying for locations for a railway, shall cause a copy of the agreement of association to be published in a newspaper, if any, published in each of the cities and towns in which the railway is to be located, and, if, in any county, a newspaper is published in none of said cities and towns therein, in such newspaper published in said county as shall be designated by the board of railroad commissioners, at least once in each of three successive weeks; and the sworn certificate of the clerk shall be conclusive evidence of such publication.

Publication of agreement of association. 1874, 29, § 5. P. S. 113, § 6. R. L. 112, § 6.

SECTION 7. The board of aldermen of a city or the selectmen of a town, upon the petition [by the president, or a majority of the directors], *executed in accordance with the by-laws or a vote of the directors* of a street railway company organized or in process of organization under the provisions of this act, or organized under a special act, for an original location of tracks in such city or town, shall give fourteen days' notice of the

Location. 1864, 229, § 14. 1871, 381, § 14. 1874, 29, § 6. P. S. 113, § 7. 1898, 578, § 13. R. L. 112, § 7. 1902, 395, 396, 399. 161 Mass. 416. 175 Mass. 518. 179 Mass. 449. 182 Mass. 41.

184 Mass. 294.
 185 Mass. 183.
 188 Mass. 180,
 250.
 192 Mass. 106.
 [1 Op. A. G.
 392, 489.]
 [Op. A. G. May
 25, 1890.]
See R. L. 53,
§§ 17, 19.
R. L. 212, § 69.
R. L. 28, § 11.
213 Mass. 105.
Amended.
1909, 417, § 1,
page 177.
See 1908, 266;
1909, 417, § 6;
1910, 518;
1911, 442.

time and place for a hearing on such petition by publication thereof in one or more newspapers, if any, published in said city or town; otherwise, in such newspaper or newspapers published in the county in which the city or town is situated as shall be designated by the board of aldermen or the selectmen of such city or town; and if, after a hearing, they are of opinion that public necessity and convenience so require, they may grant said location, or any portion thereof, and may prescribe how the tracks shall be laid, and the kind of rails, poles, wires and other appliances which shall be used, and, in addition to the general provisions of law governing such companies, and in respect of matters not treated of in such provisions, impose such other terms, conditions and obligations, incidental to and not inconsistent with the objects of a street railway company, as the public interests may in their judgment require; but no such location shall be valid, until the board of railroad commissioners, after public notice and a hearing, shall certify that such location is consistent with the public interests.*

If the board of railroad commissioners requires an alteration in such location before certifying that the same is consistent with the public interests, said board shall notify the board of aldermen or selectmen granting such location of such alteration; and thereafter said board of aldermen or selectmen may amend such location in accordance with such alteration: *provided*, that, if such alteration involves a change in the route of the railway, public notice and a hearing shall be given as hereinbefore provided in the case of an original application for a location; and thereafter the board of railroad commissioners may, as a part of the original proceedings before it, certify that such location so amended is consistent with the public interests. A location so certified to be consistent with the public interests, shall be the true location, if, within [thirty] *sixty* days after the issue of notice of said certification to the

* In acting under the provisions of chapter 399 of the Acts of 1902, now 1906, 463, part III, § 7, the Board of Railroad Commissioners established the following requirements as conditions of approval of locations granted to street railway companies:—

Every location must be accompanied by a plan showing the place in the highway to be occupied by the railway, including turnouts, and by trolley poles. The plan should also give grades and street lines and such other information as may be practicable.

The following conditions should be attached to grants of location:—

1. Tee rails to be not less than sixty (60) pounds per yard in weight.
2. Ties to be of suitable timber not less than seven (7) feet in length, six (6) inches thick, with six (6) inches face, and spaced not more than two (2) feet on centres.
3. The roadbed to be constructed with at least eighteen (18) inches of suitable ballast below base of rail, and properly drained.
4. The railway to be continuously on one side or in the centre of the driveway when circumstances permit, and whenever practicable to be separated from the driveway, in all cases the clearance from rail to any obstruction to be at least four and one-half (4½) feet on tangents and more in proportion on curves.
5. The roadway independent of the railway to be of sufficient width to properly accommodate other travel.
6. Crossings of railway from one side to the other of the highway to be avoided, but if permitted, only with provision for proper regulation respecting the operation of cars and restriction of speed.

These requirements are not to exclude other suitable conditions and restrictions by local boards or by this board as the circumstances in particular cases may require.

Under date of January 11, 1911, the board of railroad commissioners adopted the following requirements as to plans showing locations of street railway tracks:—

A street railway company petitioning the Board for approval of a location, or an extension, alteration or revocation of a location shall accompany its petition with a plan indicating in red the alignment and grades of tracks and position of poles on such location or extension, alteration or revocation of location. Said plan shall be of such scale as will clearly show the grades, curves, and locations of all poles, and shall have marked upon it degrees of curvature or radii of all curves, gradients in percentages, and elevations of all points where the gradient changes. Plans not to exceed 20 x 30 inches in size are desirable for the purpose of filing.

company, [a majority of the directors] *it shall file a written acceptance of such location executed in accordance with its by-laws or a vote of its directors* with the board of aldermen or selectmen. A location granted by a board of aldermen or selectmen, but refused certification hereunder by the board of railroad commissioners, or not accepted as hereinbefore provided, shall be void. Such location shall also be void, if the certificate of incorporation of the street railway company is not issued, and its organization is not completed, within eighteen months after said issue of said notice of said certification, or if application for said certification is not made to the board of railroad commissioners within thirty days after the grant of said location by the board of aldermen or selectmen. If in any city or town the original location of a street railway company expires, is revoked, or otherwise becomes void, the provisions of this section shall apply to a new petition for an original location therein. All locations which were granted or in use before the first day of October in the year eighteen hundred and ninety-eight are ratified and confirmed as if they had been accepted under the provisions of this section, and shall continue in force, subject only to revocation as provided in section sixty-six, and to the general provisions of law governing such companies.

Revised Laws, Chapter 53, §§ 17, 19.

SECTION 17. No highway, town way, street, turnpike, canal, railroad or street railway shall be laid out or constructed over a common or park dedicated to the use of the public, or appropriated to such use without interruption for a period of twenty years; nor shall any part of such common or park be taken for widening or altering a highway, town way or street, except with the consent of the inhabitants of the city or town, after public notice, given in the manner provided in cases of the location and alteration of highways, stating the extent and limits of the portion thereof proposed to be taken. Such consent shall be expressed by vote of the inhabitants, if ten or more voters file a request in writing to that effect with the selectmen or the mayor and aldermen within thirty days after the publication of the notice; in the absence of such request, consent shall be presumed.

Streets, etc., not to be laid out over a common, etc. 1875, 163, § 1. P. S. 54, § 13. 166 Mass. 366. 178 Mass. 300. 184 Mass. 140.

SECTION 19. Land of a public institution belonging to the commonwealth shall not be taken for a highway, town way, street, turnpike, canal, railroad or street railway without leave of the general court.

Taking of lands of a public institution regulated. 1875, 163, § 3.

P. S. 54, § 15.

[2 Op. A. G. 234.]

Revised Laws, Chapter 212, § 69.

SECTION 69. Whoever lays out, opens, or makes a highway or town way, or constructs a railroad or canal, or any other thing in the nature of a public easement, over, through, in or upon any part of an enclosure, which is the property of a city, town, parish, religious society or of private proprietors and is used or appropriated for the burial of the dead, unless authority for that purpose is specially granted by law, or unless the consent of such city, town, parish, religious society or proprietors, respectively, is first obtained, shall be punished by a fine of not more than two thousand dollars or by imprisonment for not more than one year.

Making road, etc., through burial ground. 1834, 187, § 1. R. S. 24, §§ 59, 60; 30, § 21. G. S. 165, § 40. P. S. 207, § 51.

Revised Laws, Chapter 28, § 11.

Parks to be perpetual.
1882, 154, § 10.
1893, 75.
178 Mass. 300.

SECTION 11. Land taken for or held as a park by cities and towns under the provisions of this chapter shall be forever kept open and maintained as public parks; but, except in parks in the city of Boston and in parks comprising less than one hundred acres in extent, structures for shelter, refreshment and other purposes may be erected of such material and in such places as, in the opinion of the fire commissioners, if any, do not endanger buildings beyond the limits of such park; and the provisions of section twenty of chapter fifty-three shall not apply to such buildings. No street or way and no steam railroad or street railway shall be laid out over any portion of such park except in places and in the manner approved by the board of park commissioners.

Revised Laws, Chapter 10, § 20.

Land around state house to remain open.
1894, 532, § 6.

SECTION 20. The land now taken by the commonwealth about the state house shall remain an open space, and no railroad or railway shall be constructed or operated in, upon or over the same. A grant made to a railroad or railway corporation shall not be construed to include any portion of said land.

Acts of 1900, Chapter 413.

An Act to authorize the Board of Metropolitan Park Commissioners to grant Locations to Street Railway Companies.

Metropolitan park commissioners may grant locations to street railways.

SECTION 1. The board of metropolitan park commissioners shall have authority to grant locations, as provided herein, to street railways within the roads, boulevards, parks and reservations in its care and control.

To give notice of time and place of hearing, etc.

SECTION 2. Said board, upon petition of the directors of a street railway company, or of a majority thereof, for such location, shall give notice to all parties interested of the time and place at which the board will give a hearing upon such petition, at least fourteen days before the hearing, by publication in one or more newspapers published in each city or town in which the location petitioned for would lie, and if none such is published then by publication in one or more newspapers published in each county in which the location petitioned for would lie; and after hearing, if in the opinion of the board public convenience and necessity so require, it may grant such location, or any part thereof, upon such terms, conditions and obligations, and for such compensation, as the public interest and a due regard for the rights of the commonwealth may require: *provided*, that nothing herein contained shall authorize the said board to grant a location for poles and overhead wires in any road, boulevard, park or parkway, without the approval of the governor and council. Such locations shall be void unless accepted in writing by the directors of such railroad company, or by a majority thereof, within thirty days after receiving notice thereof.

Proviso.

Locations may be extended or revoked, etc.

Provisos.

SECTION 3. Said board may by order alter, extend or revoke any location granted by it whenever in its opinion the public interest or the rights of the commonwealth so require: *provided, however*, that before so doing notice and hearing shall be given to the company and all persons interested, as provided in section two of this act; and *provided, further*, that any railroad company or any persons interested in any such order may appeal therefrom to the governor and council, within fourteen days after the filing of a copy of such order as hereinafter provided.

Copy of order to permit location, etc., to be

SECTION 4. Said board, within fourteen days after making any order which operates to permit a use or location hereunder to any street rail-

way, or an extension, alteration or revocation of a use or location previously granted, shall deposit a copy of such order in the office of the clerk of the city or town within which the location or use is permitted, altered, extended or revoked, and the clerk of that city or town shall receive and record the same.

SECTION 5. The share of the tax paid by any street railway company operating hereunder, into the treasury of the commonwealth, which would under other provisions of law be apportioned to the city or town within which its tracks laid hereunder are situated, shall be apportioned to the commonwealth and credited by the treasurer to the sinking fund of the loan to which the expenditure for the road, boulevard, park or reservation in which the tracks are located was charged.

SECTION 6. All street railway companies operating hereunder shall remain subject to the duties and liabilities imposed by other provisions of law not inconsistent herewith, and shall have the powers, duties and rights herein authorized, all of which shall be in addition to and in amendment of any charter or special provision of law or of the general laws under which they are organized.

SECTION 7. This act shall take effect upon its passage. [Approved June 27, 1900.]

Acts of 1901, Chapter 413.

An Act to authorize the Wachusett Mountain State Reservation Commission to grant Locations to Street Railway Companies.

SECTION 1. The Wachusett mountain state reservation commission shall have authority to grant locations, as provided herein, to street railways within the roads, parks and reservations under its control.

SECTION 2. Said commission, upon petition of the directors of a street railway company, or of a majority thereof, for such location, shall give a hearing thereon, notice of the time and place of which shall be given to all persons interested at least fourteen days before the hearing, by publication in one or more newspapers published in each city or town in which the location petitioned for lies, and if none such is published then by publication in one or more newspapers published in each county in which the location petitioned for lies; and after the hearing, if in the opinion of the commission public necessity and convenience so require, it may grant such location, or any part thereof, upon such terms, conditions and obligations, and for such compensations, as the public interest and a due regard for the rights of the commonwealth may require. Such locations shall be void unless accepted in writing by the directors of the railway company, or by a majority of them, within thirty days after receiving notice thereof.

SECTION 3. Within the limits of the Wachusett mountain state reservation the Wachusett mountain state reservation commission shall have full authority over the location of any such railway, and over the method and manner of its construction, and of its kind of motive power, and generally shall have such control of its operation and condition as said commission may deem reasonably necessary to insure the safety and convenience of the public.

SECTION 4. The share of the tax paid into the treasury of the commonwealth by any street railway company operating hereunder which would under other provisions of law be apportioned to the city or town within which its tracks laid hereunder are situated, shall be apportioned to the Commonwealth and credited by the treasurer to the sinking fund of the loan to which the expenditure for the road, park or reservation in which the tracks are located was charged.

deposited with clerk of city or town.

Certain share of tax paid by street railway companies to be apportioned to the commonwealth, etc.

Certain provisions of law to apply, etc.

The Wachusett mountain state reservation commission may grant locations to street railways. Hearing to be given, etc.

Commission to have authority over location, etc.

Share of tax paid to be apportioned to the commonwealth, etc.

Companies to have certain powers, duties, etc.

SECTION 5. All street railway companies operating hereunder shall remain subject to the duties, liabilities and restrictions imposed by other provisions of law not inconsistent herewith, and shall have the powers, duties and rights herein authorized, all of which shall be in addition to and in amendment of any charter or special provision of law or of the general laws under which such companies are organized.

SECTION 6. This act shall take effect upon its passage. [*Approved May 17, 1901.*]

Acts of 1908, Chapter 266.

An Act relative to Temporary Location for Street Railways.

Temporary locations for street railways. See 1910, 518; 1911, 442.

SECTION 1. If a bridge upon which a street railway company is authorized to lay and use tracks is being or is to be altered, rebuilt, improved or repaired, the board of aldermen of a city or the selectmen of a town upon the petition of the president or a majority of the directors of such street railway company may grant a temporary location for the extension of the tracks of such company in any streets or highways in such city or town so as to provide such connection between the existing tracks of such street railway company upon either side of such bridge as will prevent any interruption of proper transportation facilities by reason of such alteration, improvement, rebuilding or repair, and may prescribe how said tracks shall be laid and the kind of rails, poles, wires and other appliances to be used.

Applications to board of railroad commissioners.

SECTION 2. A street railway company whose petition for such temporary location has been refused in whole or in part, or has been neither granted nor refused, within fourteen days after the filing thereof, may apply to the board of railroad commissioners for such temporary location. If it shall appear to the board of railroad commissioners that public necessity and convenience require such temporary location, the board may enter a decree granting the same. In granting the location the board may prescribe the use of such appliances and impose such conditions and obligations as seem to them proper.

Location not valid unless.

SECTION 3. The temporary location herein provided for, if granted by municipal authority, shall not be valid unless the board files with the clerk of the city or town concerned a certificate that the granting of the location is consistent with the public interest; and in no case shall the location be valid unless within thirty days after the filing of the said certificate, or after the entering of a decree by the said board, a majority of the directors of the company shall file with the said board a written acceptance of the location.

Limit of time for use of location.

SECTION 4. A street railway company which is granted such temporary location for the extension of its tracks shall not maintain such tracks nor operate cars over the same beyond the period during which the operation of its cars over such bridge is interrupted by reason of such alteration, improvement, rebuilding or repair, and at the end of such period shall remove its tracks from the streets or highways upon and over which such temporary location has been granted.

Expense of construction of tracks to be apportioned.

SECTION 5. If such bridge is altered, rebuilt, improved or repaired under the provisions of sections twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven and twenty-eight of Part I of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six, the cost of the construction of the tracks of the street railway company upon and over such temporary location shall be reckoned as a part of the charges and expenses of the alteration, improvement or repair of the crossing, to be apportioned by the special commission as provided thereunder. [*Approved March 24, 1908.*]

Acts of 1909, Chapter 417, § 1.

An Act relative to Locations of Street Railway Companies.

SECTION 1. Section seven of Part III of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby amended by striking out the words "by the president or a majority of the directors", in the second and third lines, and inserting in place thereof the words:— executed in accordance with the by-laws or a vote of the directors,— by striking out the word "thirty", in the forty-second line, and inserting in place thereof the word:— sixty,— by striking out the words "a majority of the directors", in the forty-fourth line, and inserting in place thereof the word:— it,— and by inserting after the word "location", in the forty-fifth line, the words:— executed in accordance with its by-laws or a vote of its directors,— so as to read as follows:— *Section 7. [For § 7 as amended, see above.]*

1906, 463,
Part III, § 7,
amended.
See 1911, 442,
481, 509.

Acts of 1911, Chapter 442.

An Act relative to Pole and Wire Locations of Street Railway Companies.

SECTION 1. A street railway company may, for all purposes necessary or reasonably incident to the construction, maintenance or operation of its railway, generate, manufacture, use and transmit electricity in any city or town in which it may be authorized to operate its railway, and for that purpose may erect and maintain, as a part of its railway, and subject to the provisions of sections seven, sixty-four, sixty-five and sixty-six, respectively, of Part III of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six, relative to the grant and revocation of authority therefor, poles and trolley, feed and stay wires, and other proper devices for, or used in connection with, the transmission of electricity, of such materials and workmanship as may be prescribed in the grant of authority therefor, in, over and under any streets, highways and bridges in any such city or town: *provided*, that authority to erect and maintain the same has been, or shall hereafter be, granted by the board of aldermen of the city or selectmen of the town, respectively; and may also erect and maintain such poles, wires and other devices upon and over any private land, with the consent of the owners thereof.

Pole and wire
locations of
street railway
companies.
See 1911,
481, 509.

Provido.

SECTION 2. This act shall take effect upon its passage. [*Approved May 13, 1911.*]

LOCATIONS IN BOSTON, CAMBRIDGE AND BROOKLINE.

Acts of 1887, Chapter 413.

SECTION 8. No location and no alteration or revocation of location of a street railway, and no authority to run cars over or use the tracks of another street railway, whether surface or elevated, in the cities of Boston, Cambridge, or in the town of Brookline, shall hereafter be valid until approved by the board of railroad commissioners. Nothing herein contained shall affect any proceeding now pending before the mayor and board of aldermen of the city of Cambridge.

Location not
to be valid
until approved
by the rail-
road com-
missioners.
[See 1906, 463,
Part III, § 7,
above.]

Revised Laws, Chapter 121, §§ 24, 26.

SECTION 24. A person or corporation, not a railway company, engaged in the business of transmitting electricity for light or power through wires located over or under the streets and highways may sell such electricity for operating heating, cooking and kindred apparatus and

Electricity for
heating and
cooking pur-
poses.
1895, 420.
188 Mass. 250.

motors: but the provisions of this section shall not confer upon such person or corporation the exclusive right to sell or distribute electricity in any city or town for such purposes.

Erection of wires of different companies restricted.
1887, 382, § 3.
1892, 274.
1895, 350.
1901, 389.
157 Mass. 86.
188 Mass. 250.
197 Mass. 556.
[1 Op. A. G. 88.]
See 1908, 617.

SECTION 26. In a city or town in which a company, corporation or person is engaged in the manufacture or sale of electric light no other person, firm or corporation shall lay, erect, maintain or use, over or under the streets, lanes and highways of such city or town, any wires for the transmission of electricity for light, heat or power except wires used for heat or power by street railway companies, without the consent of the mayor and aldermen of such city or selectmen of such town granted after notice to all parties interested and a public hearing.

Presentation of agreement of association, and annexed certificates, to board of railroad commissioners.
1872, 53, § 9.
1874, 372, § 28.
P. S. 112, § 43.
R. L. 111, § 45.
R. L. 112, § 8.

SECTION 8. When the amount of capital stock named in the agreement of association has been subscribed in good faith by responsible persons, and ten per cent of the par value of each share has been actually paid in cash to the treasurer, the directors, clerk and treasurer shall annex to the agreement of association their certificate setting forth these facts, and that it is intended in good faith to locate, construct, maintain and operate the railway as described in said agreement, shall annex to said agreement the certificate of publication specified in section six and the several certificates of location, and shall present the same for inspection to the board of railroad commissioners.

Certificate of incorporation.
1872, 53, § 10.
1874, 372, § 29.
1881, 161.
P. S. 112, § 44.
R. L. 111, § 46.
R. L. 112, § 8.

SECTION 9. When it is shown to the satisfaction of the board of railroad commissioners that the requirements of this act preliminary to the incorporation of a company have been complied with, and that locations have been obtained for a railway between the termini and substantially over the route set forth in the agreement of association, the clerk of said board, upon its order, shall annex to the agreement of association a certificate stating such fact. The directors shall thereupon file the agreement of association, with all the certificates annexed thereto, including the plan, if any, required by the board of railroad commissioners, in the office of the secretary of the commonwealth; who, upon the payment to him of a fee of fifty dollars, shall receive and preserve the same in form convenient for reference and open to public inspection; and shall thereupon issue a certificate of incorporation substantially in the following form:—

COMMONWEALTH OF MASSACHUSETTS.

Form of certificate.

Be it known that whereas [names of the subscribers to the agreement of association] have associated themselves with the intention of forming a corporation under the name of the [name of the company], for the purpose of locating, constructing, maintaining and operating a street railway [description of the railway as in the agreement of association], and have complied with the statutes of this commonwealth in such cases made and provided: Now, therefore, I, _____, secretary of the commonwealth of Massachusetts, do hereby certify that the persons aforesaid, their associates and successors, are legally established as a corporation under the name of the [name of the company], with all the powers and privileges, and subject to all the duties, liabilities and restric-

tions, set forth in all general laws which now are or hereafter may be in force relating to street railway companies.

In witness whereof, I have hereunto subscribed my official signature, and affixed the Great Seal of said commonwealth, this _____ day of _____, in the year _____ [day, month and year].

The secretary of the commonwealth shall sign the certificate of incorporation, and cause the Great Seal of the commonwealth to be thereto affixed, and such certificate shall have the force and effect of a special charter. The secretary of the commonwealth shall also cause a record of the certificate of incorporation to be made, and such certificate, or such record, or a certified copy thereof, shall be conclusive evidence of the existence of such corporation.

ORGANIZATION.

SECTION 10. Upon the issue of such certificate of incorporation, the first meeting of the incorporators shall be called by a notice signed by a majority of the directors; and such notice shall state the time, place and purposes of the meeting. A copy of such notice shall, seven days at least before the day appointed for the meeting, be given to each incorporator or left at his residence or usual place of business, or deposited in the post office, postage prepaid, and addressed to him at his residence or usual place of business, and another copy thereof, and an affidavit of the clerk that the notice has been duly served, shall be recorded with the records of the company. If all of the incorporators shall in writing waive such notice and fix the time and place of the meeting, no notice shall be required.

First meeting of incorporators.
1872, 53, § 11.
1874, 372, § 30.
1878, 215.
1879, 156.
P. S. 112, § 45.
R. L. 111, § 48.
R. L. 112, § 8.
See 1903, 437, § 9.

SECTION 11. At such first meeting, or at any adjournment thereof, the incorporators shall organize by the adoption of by-laws, and by the election, by ballot, of not less than five directors. The clerk appointed by the directors under section five shall make and attest a record of the proceedings until the clerk of the company has been chosen and sworn, including a record of such choice and qualification.

Organization.
R. L. 112, § 8.
See 1903, 437, § 10.

OFFICERS.

SECTION 12. The business of every company shall be managed and conducted by a president, a board of not less than five directors, a clerk, a treasurer and such other officers and such agents as the company by its by-laws shall authorize.

Officers.
1864, 229, § 2.
1871, 381, § 2.
P. S. 113, § 9.
R. L. 112, § 15.

See 1903, 437, § 17.

167 Mass. 161.

SECTION 13. The directors shall be elected annually by the stockholders by ballot, and the president shall be elected annually by and from the board of directors, and the treasurer and the clerk annually by said board. Every director, unless the by-laws otherwise provide, shall be a stockholder. The treasurer may be required to give a bond for the faithful performance of his duty in such sum and with such sureties as the by-laws may prescribe. The clerk, who shall be a resident of

Election of officers.
1864, 229, § 2.
1871, 381, § 2.
P. S. 113, § 9.
R. L. 112, § 15.
See 1903, 437, § 18.
Amended.
1909, 417, §§ 5, 6.

this commonwealth, shall be sworn, and shall record all votes of the company in a book to be kept for that purpose. The officers of a company shall hold office for one year and until their successors are chosen and qualified. The manner of choosing or of appointing all other agents and officers and of filling all vacancies shall be prescribed by the by-laws, and, in default of provision by such by-laws, vacancies may be filled by the board of directors. *Any requirement in the general laws of action to be taken or instruments to be signed by the president, directors or a majority of the directors, of a street railway company, relative to the grants, extensions, alterations and revocations of location, abolition of grade crossings and rights in state highways, shall be sufficiently and legally complied with if such action is taken by a vote, or if such instrument is executed in accordance with and by the person or persons designated in, a vote of the directors of such company, at a meeting duly and properly held, at which a quorum of the board is present.*

[See page 179, § 13.]

Acts of 1909, Chapter 417, §§ 5, 6.

1906, 463,
Part III, § 13,
amended.
See 1911, 442,
481, 509.

SECTION 5. Section thirteen of Part III of said chapter four hundred and sixty-three is hereby amended by adding at the end thereof the following:— Any requirement in the general laws of action to be taken or instruments to be signed by the president, directors, or a majority of the directors, of a street railway company, relative to the grants, extensions, alterations, and revocations of location, abolition of grade crossings and rights in state highways, shall be sufficiently and legally complied with if such action is taken by a vote, or if such instrument is executed in accordance with, and by the person or persons designated in, a vote of the directors of such company, at a meeting duly and properly held, at which a quorum of the board is present, — so as to read as follows:— *Section 13.* The directors shall be elected annually by the stockholders by ballot, and the president shall be elected annually by and from the board of directors, and the treasurer and the clerk annually by said board. Every director, unless the by-laws otherwise provide, shall be a stockholder. The treasurer may be required to give a bond for the faithful performance of his duty in such sum and with such sureties as the by-laws may prescribe. The clerk, who shall be a resident of this commonwealth, shall be sworn, and shall record all votes of the company in a book to be kept for that purpose. The officers of a company shall hold office for one year and until their successors are chosen and qualified. The manner of choosing or of appointing all other agents and officers and of filling all vacancies shall be prescribed by the by-laws, and, in default of provision by such by-laws, vacancies may be filled by the board of directors. Any requirement in the general laws of action to be taken or instruments to be signed by the president, directors, or a majority of the directors, of a street railway company, relative to the grants, extensions, alterations, and revocations of location, abolition of grade crossings and rights in state highways, shall be sufficiently and legally complied with if such action is taken by a vote, or if such instrument is executed in accordance with, and by the person or persons designated in, a vote of the directors of such company, at a meeting duly and properly held, at which a quorum of the board is present.

Election of
officers.

SECTION 6. Sections seven, sixty-four, sixty-five and seventy of Part III of said chapter four hundred and sixty-three, as amended by this act, and section sixty-six of Part III of said chapter, shall apply to the Boston Elevated Railway Company in respect to the street railways at any time owned, leased or operated by it, and to companies whose railways were, on the first day of October in the year eighteen hundred and ninety-eight, leased or operated by it. [Approved May 20, 1909.]

Boston Elevated Railway Company. Sections to apply.

SECTION 14. There shall be an annual meeting of the stockholders, and the time and place of holding it, and the manner of conducting it, shall be fixed by the by-laws. All meetings of stockholders shall be held in the commonwealth, and shall be called, and notice thereof given, in the manner provided in the by-laws of the company; or, if the by-laws make no provision therefor, shall be called by the president, and a written or printed notice, stating the place, day and hour thereof, given by the clerk, at least seven days before such meeting, to each stockholder by leaving such notice with him or at his residence or usual place of business, or by mailing it, postage prepaid, and addressed to each stockholder at his address as it appears upon the books of the company. Unless the by-laws otherwise provide, a majority in interest of all stock issued and outstanding and entitled to vote shall constitute a quorum. Notices of all meetings of stockholders shall state the purposes for which the meetings are called. No notice of the time, place or purpose of any regular or special meeting of the stockholders shall be required if every stockholder, or his attorney thereunto authorized, by a writing which is filed with the records of the meeting, waives such notice.

Meetings of stockholders. 1864, 229, § 3. 1871, 381, § 3. P. S. 113, § 10. R. L. 112, § 16. See 1903, 437, § 20.

SECTION 15. If, by reason of the death or absence of the officers of the company or other cause, there is no person authorized to call or preside at a legal meeting, or if the clerk or other officer refuses or neglects to call it, a justice of the peace may, upon written application of three or more of the stockholders, issue a warrant to any one of them, directing him to call a meeting by giving such notice as is required by law, and may, by the same warrant, direct him to preside at the meeting until a clerk is chosen and qualified, if no officer of the company is present who is legally authorized to preside.

May be called under warrant of justice of the peace. 1833, 49. R. S. 44, § 4. G. S. 68, § 5. P. S. 105, § 11. R. L. 109, § 15. See 1903, 437, § 21.

SECTION 16. A special meeting of the stockholders shall be called, and a written or printed notice thereof, stating the time, place and purpose of the meeting, given, by the clerk upon written application of three or more stockholders who are entitled to vote, and who hold at least one tenth part in interest of the capital stock.

Special meetings. 1876, 201. P. S. 112, § 52. 1897, 99. R. L. 111, § 56. See 1903, 437, § 22.

SECTION 17. A company shall not directly or indirectly vote upon any share of its own stock.

R. L. 112, § 17.

See 1903, 437, § 23.

SECTION 18. Stockholders who are entitled to vote shall have one vote for each share of stock owned by them. Stockholders may vote either in person or by proxy. No proxy

Voting rights of company upon its own stock.

— of stockholders; proxies. 1864, 229. §§ 4, 5.

1871, 381,
§§ 4, 5.
P. S. 113,
§§ 11, 12.
1889, 210.

which is dated more than six months before the meeting named therein shall be accepted, and no such proxy shall be valid after the final adjournment of such meeting.

R. L. 112, § 17.

See 1903, 437, § 24.

Voting rights
of fiduciary
stockholders.
1829, 53, § 12.
R. S. 38, § 35.
1838, 98, § 2.

SECTION 19. Executors, administrators, guardians, trustees or persons in any other representative or fiduciary capacity may vote as stockholders upon stock held in such capacity.

G. S. 68, 11.
P. S. 105, § 13.

R. L. 109, § 17.
9 Cush. 192.

101 Mass. 398.
See 1903, 437, § 20.

Meetings of
directors.
See 1903, 437,
§ 25.

SECTION 20. Meetings of the board of directors may be held within or without the commonwealth. Any meeting of the board of directors shall be a legal meeting without notice, if each director who is absent, by a writing which is filed with the records of the meeting, waives such notice.

CAPITAL STOCK.

Stock certifi-
cates.
See 1903, 437,
§ 26.

SECTION 21. Each stockholder shall be entitled to a certificate which shall be signed by the president and by the treasurer of the company, or by such other officers as may be authorized by the by-laws, shall be sealed with its seal, and shall certify the number of shares owned by him in such company.

Transfer of
shares.

1864, 229, § 10.
1871, 381, § 10.
1881, 302.
P. S. 113, § 13.
R. L. 112, § 18.
1903, 423,
§§ 1, 2; 437,
§ 28.
1910, 171.

SECTION 22. The delivery of a certificate of stock by the person named as the stockholder in such certificate or by a person entrusted by him with its possession for any purpose to a bona fide purchaser or pledgee for value, with a written transfer thereof, or with a written power of attorney to sell, assign or transfer the same, signed by the person named as the stockholder in such certificate, shall be a sufficient delivery to transfer title as against all persons; but no such transfer shall affect the right of the company to pay any dividend due upon the stock, or to treat the holder of record as the holder in fact until it has been recorded upon the books of the company, or until a new certificate has been issued to the person to whom it has been so transferred. Such purchaser, upon delivery of the former certificate to the treasurer of the company, shall be entitled to receive a new certificate. A pledgee of stock transferred as collateral security shall be entitled to a new certificate if the instrument of transfer substantially describes the debt or duty which is intended to be secured thereby. Such new certificate shall express on its face that it is held as collateral security, and the name of the pledgor shall be stated thereon, who alone shall be liable as a stockholder, and entitled to vote thereon.

Stock books
and corporate
records.

1858, 144.
G. S. 68, § 10.
P. S. 105, § 21.
R. L. 109, § 32.
1859, 227.
G. S. 68, § 20.
1861, 120.
1864, 201, § 1.
P. S. 105, § 22.
R. L. 109, § 33.

SECTION 23. The certificate of incorporation, and an attested copy of the agreement of association, and of the by-laws, with a reference on the margin of the copy of the by-laws to all amendments thereof, and a true record of all meetings of stockholders shall be kept by the company at its principal office in this commonwealth for the inspection of its stockholders. The stock and transfer books of such company, which shall contain a

complete list of all stockholders, their residences and the amount of stock held by each, shall be kept at an office of the company in this commonwealth for the inspection of its stockholders. Said stock and transfer books and said attested copies and records shall be competent evidence in any court of this commonwealth. If any officer or agent of a company having charge of such copies, books or records refuses or neglects to exhibit them or to submit them to examination as aforesaid, he or the company shall be liable to any stockholder for all actual damages sustained by reason of such refusal or neglect, and the supreme judicial court or the superior court shall have jurisdiction in equity, upon petition of a stockholder, to order any or all of said copies, books or records to be exhibited to him and to such other stockholders as may become parties to said petition, at such a place and time as may be designated in the order.

1889, 222, § 3.
R. L. 109, § 34.
[1 Op. A. G.
278.]
1847, 107.
G. S. 68, § 12.
P. S. 105, § 23.
R. L. 109, § 35.
See 1903, 437,
§ 30.

SECTION 24. The directors of a company may, unless otherwise provided by the by-laws, determine the conditions upon which a new certificate of stock may be issued in place of any certificate which is alleged to have been lost or destroyed. They may, in their discretion, require the owner of a lost or destroyed certificate, or his legal representative, to give a bond with sufficient surety to the company in a sum not exceeding double the market value of the stock to indemnify the company against any loss or claim which may arise by reason of the issue of a certificate in place of such lost or destroyed stock certificate.

Lost
certificates.
R. L. 110, § 28.
See 1903, 437,
§ 31.

SECTION 25. Every company shall, once in every five years, publish three times successively in a newspaper in the city of Boston, and also in a newspaper in the county in which the principal office of the company is located, a list of all dividends which have remained unclaimed for two years or more and the names of the persons to whose credit such dividends stand.

Unclaimed
dividends.
1837, 56.
G. S. 68, § 19.
P. S. 105, § 27.
R. L. 109, § 40.
See 1903, 437,
§ 32.

SECTION 26. Certificates of stock shall not be issued by a company until the par value thereof shall have been actually paid in in cash.

Shares to be
issued at par.
1864, 229,
§§ 6, 10.

	1871, 381, §§ 7, 10.	1881, 302.
P. S. 113, § 13.	R. L. 112, § 18.	150 Mass. 200.

SHARES ISSUED FOR PAR ONLY.

Revised Laws, Chapter 109, § 19.

SECTION 19. No corporation, unless specially authorized, shall issue a share for a less amount to be actually paid in thereon than the par value of the shares at the date of issue.

— not to
be issued for
less than par.
1851, 133, § 16.
1858, 167.

G. S. 68, § 9.	1873, 39, § 1.	P. S. 106, § 41.
1871, 392, § 3.	P. S. 105, § 17.	157 Mass. 71.

SECTION 27. The directors may assess upon all the shares subscribed, but not paid in, such amounts of money which are not in excess of their par value, as they think proper, and may direct the same to be paid to the treasurer, who shall give written notice thereof to the subscribers. If a subscriber neglects to pay his assessment for thirty days after such notice,

Assessments
upon capital
stock, and
collection
thereof.
1864, 229,
§§ 8, 9.
1871, 381, § 9.
P. S. 113, § 17.
R. L. 112, § 25.
See 1903, 437,
§ 15.

the directors may transfer the rights under such subscription to any person who subscribes for the same and pays the assessments due, or may order the treasurer, after giving notice of the sale, to sell such shares by public auction to the highest bidder, and, upon the payment by him to the company of the unpaid assessments, of interest to the date of sale and of the charges of the sale, the shares shall be transferred to him. If, within thirty days after the sale, the purchaser does not make said payment to the company, the sale shall be cancelled, and the subscriber shall be liable to the company for the unpaid assessments, the interest thereon, and the charges of sale. If the amount so paid by the purchaser to the company is more than the amount for which the shares were sold, the subscriber shall be liable to the purchaser for the deficiency; if it is less, the purchaser shall be liable to the subscriber for the surplus. If a subscriber neglects to pay his assessment for thirty days, as above provided, the directors may elect to proceed by an action at law against said delinquent subscriber to recover all amounts due and payable by him with interest. If a judgment rendered in an action against a subscriber remains unsatisfied for thirty days, all amounts previously paid by him shall be forfeited to the company, and the directors may offer such shares for sale as above provided.

Subscription to full capital stock, and payment in of fifty per cent thereof, before construction.
1864, 229, § 6.
1871, 381, § 6.
P. S. 113, § 19.
R. L. 112, § 27.
141 Mass. 496.

Directors jointly and severally liable for debts and contracts till payment in of full capital stock.
1864, 229, § 6.
1871, 381, § 7.
P. S. 113, § 14.
R. L. 112, § 19.
[See Savage-Shaw decision, May 16, 1907.]

SECTION 28. A street railway company shall not begin to build its railway until it shall have filed in the office of the secretary of the commonwealth a certificate, signed and sworn to by its president, treasurer, clerk and a majority of its directors, stating that the amount of its capital stock has been unconditionally subscribed for by responsible parties, and that fifty per cent of the par value of each share thereof has been actually paid in in cash.

SECTION 29. The directors of a street railway company shall be jointly and severally liable, to the extent of its capital stock, for all its debts and contracts, until the whole amount of its capital stock as originally fixed by its agreement of association, or if a chartered company, by its directors, and authorized by the board of railroad commissioners, shall have been paid in, and until a certificate stating the amount thereof so fixed and paid in shall have been signed and sworn to by its president, treasurer, clerk and a majority of its directors, and filed in the office of the secretary of the commonwealth.

CORPORATE POWERS.

Powers to cease, if railway is not built within eighteen months after date of certificate of incorporation, unless, etc.
1857, 198.
G. S. 63, § 140.
1864, 229, § 12.
1871, 381, § 12.

SECTION 30. A street railway company, incorporated under the laws of this commonwealth, shall have authority, subject to the provisions of this chapter, to construct, maintain and operate a street railway, but, if such company does not build and put in operation its railway within eighteen months after the date of its certificate of incorporation, its corporate powers shall cease, unless the board of railroad commissioners, after

public notice and a hearing, shall extend said time by a certificate, stating that in its judgment due diligence has been exercised by the company, and that public necessity and convenience require such extension.

P. S. 113, § 20.
R. L. 112, § 28.
1910, 187.

SECTION 31. A street railway company, which, by its charter or certificate of incorporation, or by special act, is authorized to construct, maintain and operate a street railway in any city or town in this commonwealth, and which has constructed its railway therein, may, subject to the provisions of the general laws relative to the location, construction and operation of street railways, extend its railway into such other cities and towns in this commonwealth as the board of railroad commissioners shall, upon the application of such company, and after public notice and a hearing, certify that the public necessity and convenience require. An attested copy of such certificate shall, within three days after the granting of the same, be filed by said board in the office of the secretary of the commonwealth.

Extension of
corporate
authority to
operate rail-
way.
1896, 501.
R. L. 112, § 92.
1910, 187.

SECTION 32. A street railway company whose petition for a location, necessary, in the judgment of the board of railroad commissioners, to furnish proper transportation facilities between two cities, or two towns, or a city and town, has in whole or in part been granted or refused, or has been neither granted nor refused within three months after the filing thereof, may, within thirty days of such grant or refusal of a location, or of the expiration of said three months, apply to the board of railroad commissioners for such location. If it shall appear at a hearing on said application, after such notice to the board of aldermen or the selectmen, and to all persons who own real estate which abuts upon any way in which such location was asked for, by publication or otherwise, as the board of railroad commissioners may order, that the company has already been granted and has accepted locations for a street railway in two cities, or two towns, or a city and town, adjoining the city or town in which such location has been asked for, or has already been granted and has accepted locations for a street railway in two adjoining cities, or two adjoining towns, or an adjoining city and town, and that a location is necessary to connect such existing locations, the board of railroad commissioners may, if it finds that public necessity and convenience so require, enter a decree granting a connecting location. In granting the location said board may prescribe the appliances and impose the conditions and obligations which are specified or referred to in section seven relative to the granting of original locations. Such location shall be the true location, if, within thirty days after the issue of notice to the company of the entry of said decree, the directors shall file a written acceptance of such location with the board of railroad commissioners; otherwise, said location shall be void.

Connecting
location.
1898, 578, § 14.
R. L. 112, § 11.

SECTION 33. A street railway company may purchase and hold such real and personal estate as may be necessary or con-

Real and per-
sonal estate;
stock and

bonds of other domestic street railway companies organized under general laws.
1864, 229, § 13.
1871, 381, § 13.

Pleasure resorts.
1895, 316.
R. L. 112, § 76.
212 *Mass.* 589.

Motive power.
1864, 229, § 34.
1871, 381, § 44.
P. S. 113, § 39.
R. L. 112, § 51.
Connecting companies.
Joint use of tracks.
1888, 278, § 1.
R. L. 112, § 78.
See 1911, 487,
below.

Joint use of street railway tracks.

Proviso.

venient for the operation of its railway; but it shall not, except as provided in section fifty-three, directly or indirectly, subscribe for, take or hold stock or bonds of a street railway company which is organized under the general laws unless specially so authorized by the general court.

1874, 29, § 10.

P. S. 113, § 18.

R. L. 112, § 26.

SECTION 34. A street railway company may, except in the city of Boston, with the approval of the board of railroad commissioners, acquire, hold, maintain and equip land for purposes of recreation and for pleasure resorts. Admission to the grounds of such pleasure resorts shall be free, subject to such restrictions as may, with the approval of said board, be imposed by the board of aldermen of cities or the selectmen of towns in which such grounds may be situated. Said company shall not sell intoxicating liquors nor allow them to be sold on said grounds; nor shall it sell said land without the approval of the board of railroad commissioners.

SECTION 35. A street railway company may use electricity, or such other motive power, other than steam, as the board of railroad commissioners may permit.

SECTION 36. A street railway company may permit another street railway company to operate cars over its tracks to such extent and under such rules and regulations as the board of railroad commissioners shall determine to be consistent with public safety.

Acts of 1911, Chapter 487.

An Act relative to the Joint Use of Tracks by Street Railway Companies.

SECTION 1. The board of railroad commissioners shall have authority, upon the petition of a street railway company or of any interested party, after notice and a public hearing, to determine the reasonable conditions which shall govern the interchange of traffic and cars between street railway companies, and may, wherever it is reasonable and consistent with the public interest, order a street railway company to receive and convey over its tracks the cars of another such company at such times and over such routes and upon such terms, including reasonable compensation, as the board may prescribe: *provided, however,* that a street railway company shall have control of and responsibility for the management and operation of all cars while upon its railway as fully as if it owned them. Said board may also recommend such joint rates, fares and charges as are consistent with the provisions of any special charter of any street railway company, specifying at the same time and in every instance the part of the joint rate, fare or charge to which each street railway company affected thereby shall be entitled, and may make such other recommendations as seem appropriate to the circumstances of each particular case. The supreme judicial court or the superior court shall have jurisdiction in equity to enforce any orders made by said board under the provisions of this act.

SECTION 2. This act shall take effect upon its passage. [*Approved* May 27, 1911.]

Acts of 1910, Chapter 596.

An Act to authorize the Use by Street Railway Companies of Tracks of Railroad Corporations.

SECTION 1. A street railway company, with the consent of a railroad corporation owning tracks, may, to such extent and subject to such terms and regulations as the board of railroad commissioners may approve or prescribe, operate cars upon and over such tracks of said railroad corporation as are equipped for operation by the electric system of motive power, and may connect its own tracks with the tracks of such railroad in such manner as may be agreed upon by the two companies and approved by the board of railroad commissioners.

Street railway companies may, in certain cases, operate cars over tracks of railroad corporations. See 1911, 487, above.

SECTION 2. This act shall take effect upon its passage. [Approved June 9, 1910.]

SECTION 37. A street railway company may allow street sprinkling cars or similar apparatus to be used upon its tracks, may furnish the motive power and use of tracks or other facilities, and may make contracts therefor; but the provisions of this section shall be operative only to such extent and subject to such regulations and restrictions as the board of railroad commissioners, having regard to the necessities of public travel, may approve.

Street sprinkling cars. 1897, 315. R. L. 112, § 54. 189 Mass. 431.

SECTION 38. A street railway company may, with the consent of the board of aldermen of a city or the selectmen of a town, convey in cars over its tracks snow, ice, stones, gravel, dirt, or street sweepings, taken from any street or way over or through which its tracks are located, for the purpose of keeping said street or way in proper condition for travel, or may convey to any point on its line, or deliver to any connecting line or any other street railway company, necessary material for use in the construction, grading, repairing or improving of any street or way in any city or town, or of any state highway, whether on the line of any street railway company or not, and may make contracts with cities, towns, the Massachusetts highway commission, and with other street railway companies for the transportation of such material.

Gravel, etc., cars. 1898, 328. R. L. 112, § 55. 1902, 288. 190 Mass. 530.

SECTION 39. A street railway company may convey in cars over its tracks coal and other supplies for its own use.

Coal and other supplies.

SECTION 40. A street railway company may carry the United States mail.

Carriers of mail. 1901, 254. R. L. 112, § 75.

TRANSPORTATION OF MILITARY SUPPLIES.

Acts of 1909, Chapter 118.

An Act to authorize the Transportation of Military Supplies and Equipment over the Lines of Street Railway, Electric Railroad and Elevated Railway Companies.

SECTION 1. All street railway, electric railroad, and elevated railway companies within the commonwealth are hereby authorized to transport military supplies and equipment over their respective lines, and from and to any point thereon, subject only to the supervision of,

Transportation of military supplies, etc.

and to such regulations as may be imposed by, the board of railroad commissioners.

SECTION 2. This act shall take effect upon its passage. [*Approved February 26, 1909.**]

Acts of 1908, Chapter 278.

An Act to authorize Street Railway Companies to transport Milk and Cream.

Transportation of milk and cream. *Extended, 1909, 118.*

SECTION 1. All street railway companies within the commonwealth are hereby authorized to transport milk and cream over and upon their respective lines of railway and from and to any point thereon, subject only to the supervision of and to such regulations as may be imposed by the board of railroad commissioners, any restrictions upon the right of said companies to transport milk and cream heretofore imposed under any existing laws or charters to the contrary notwithstanding.

SECTION 2. This act shall take effect upon its passage. [*Approved March 25, 1908.*]

Carriers of baggage and freight, etc. 1903, 202. 1904, 441. *Superseded, 1907, 402.* [*See below.*] *See 1902, 288; 1908, 273; 1909, 118.*

[SECTION 41. A street railway company may become a common carrier of newspapers, baggage, express matter and freight in such cases, upon such parts of its railway, and to such extent, in any city or town as, after public notice and a hearing upon the petition of the president or a majority of the directors of the company or any interested party, the board of aldermen or the selectmen, in such city or town, shall by order approve: *provided*, that a company shall actually engage in the business of a common carrier under authority of this section only in such of the cases, upon such of the parts of its railway, and to so much of the extent, approved as aforesaid, as the board of railroad commissioners shall certify, after public notice and a hearing upon the petition of the president or a majority of the directors of the company or any interested party, that public necessity and convenience require; and *provided, further*, that any company acting under authority hereof shall be subject to such regulations and restrictions as may from time to time be made by the local authorities aforesaid, with the approval of the board of railroad commissioners, and shall also be subject to the provisions of all laws now or hereafter in force relating to common carriers so far as they shall be consistent herewith and with said regulations and restrictions.]

* Under date of April 13, 1909, the Board of Railroad Commissioners established the following regulations for the transportation of military supplies and equipment: —

1. The exercise of the authority granted by the above act shall in no way alter or abridge the duties and obligations of the company relative to the transportation of passengers, nor in any way interfere with the conduct of the passenger service, except in cases of emergency and of military necessity.

2. All military supplies and equipment shall be transported in suitable cars, to be provided with proper brakes and safety appliances and (except as regards cars other than the first car on any train) with proper fenders, and to be run at no time at a higher rate of speed than that at which the company operates passenger cars.

3. The transportation of explosives is prohibited.

4. Companies shall be subject to such further regulations and restrictions as the public interest may from time to time require.

Acts of 1907, Chapter 402.

An Act relative to Street Railway Companies acting as Common Carriers.

SECTION 1. A street railway company may become a common carrier of newspapers, baggage, express matter and freight in such cases, upon such parts of its railway, and to such extent, in any city or town, as, after public notice and a hearing, upon the petition of any interested party, the board of aldermen or the selectmen in such city or town and the board of railroad commissioners shall by order approve. If the board of aldermen or selectmen to whom such a petition is presented act adversely thereon or fail to act within sixty days from the date of the filing of such petition the petitioner or any interested party may file such petition with the board of railroad commissioners, who shall after public notice and a hearing determine whether public necessity and convenience require the granting of such petition and shall make an order dismissing such petition or requiring any street railway company named in such petition to act as such common carrier in such cases, upon such parts of its railway and to such extent, and under such regulations and restrictions, as in the opinion of said railroad commissioners public necessity and convenience require. Any street railway company acting under authority hereof shall be subject to such regulations and restrictions as may from time to time be made by the local authorities aforesaid, with the approval of the railroad commissioners, and shall also be subject to the provisions of all laws now or hereafter in force relating to common carriers so far as they shall be consistent herewith and with said regulations and restrictions. The authority conferred upon any street railway company by virtue of the provisions of this act may at any time be revoked or terminated in any city or town or upon any part of its railway, by the board of aldermen or selectmen with the approval of the board of railroad commissioners.

Carriers of baggage and freight, etc.
1903, 202.
1904, 441.
1906, 463,
Part III, § 41.
See 1908, 278.

SECTION 2. Section forty-one of Part III. of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby repealed. [Approved May 10, 1907.]

1906, 463,
Part III, § 41,
repealed.

Acts of 1913, Chapter 223.

An Act relative to the Law of the Road.

SECTION 1. Chapter fifty-four of the Revised Laws, entitled "Of the Law of the Road", is hereby amended by adding at the end thereof the following new section, to be numbered five: — *Section 5.* For the purposes of this act and in construing rules, by-laws and regulations concerning the use and operation of vehicles on the streets and ways in this commonwealth, street railway cars or other cars moving upon rails shall not be considered to be vehicles unless it is otherwise expressly so provided.

R. L. 54,
amended.

SECTION 2. This act shall take effect upon its passage. [Approved March 6, 1913.]

LAND.

SECTION 42. Except as provided in this act, and except for the purpose of reaching its car barns or repair shops, and of reaching and providing convenient terminals in parks and pleasure resorts situated upon the line of its railway, and of reaching its freight yards and terminals and of maintaining spurs and sidings, and for other purposes incident to performing the business authorized by chapter four hundred and two of the acts of

Private land.
1901, 503,
§§ 3, 4.
R. L. 112, § 29.
178 Mass. 300.
Amended by
1910, 551.
See 1908, 266,
301; 1910, 518.

the year nineteen hundred and seven, a street railway company shall not, unless authorized by special act of the general court, construct or operate any part of its railway outside the limits of a public highway, street or bridge; but a street railway company which, prior to the fourteenth day of June in the year nineteen hundred and one, without special legislative authority therefor constructed any part of its railway upon private land, with the consent of the owners of such land, or upon land leased or purchased by such company, or which prior to said date purchased or leased land for the purpose of constructing its railway thereon, or which prior to said date after public notice and a hearing obtained the approval of the board of aldermen of a city or of the selectmen of a town to the construction of a part of its railway upon private land within such city or town, and prior to said date actually with the consent of the owners of the land began, or obtained their consent to begin, such construction, may construct, maintain and operate its railway upon such private land, subject however to the provisions of this act conferring upon the board of railroad commissioners control over street railways constructed upon private land.

Acts of 1910, Chapter 551.

An Act relative to Locations of Street Railway Companies upon Private Land.

1906, 463,
Part III, § 42,
amended.

Rights of
street railway
companies
over private
land, etc.

Section forty-two of Part III of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby amended by inserting after the word "railway", at the beginning of the fifth line, the words:— and of reaching its freight yards and terminals, and of maintaining spurs and sidings, and for other purposes incident to performing the business authorized by chapter four hundred and two of the acts of the year nineteen hundred and seven, — so as to read as follows:— *Section 42.* Except as provided in this act, and except for the purpose of reaching its car barns or repair shops, and of reaching and providing convenient terminals in parks and pleasure resorts situated upon the line of its railway, and of reaching its freight yards and terminals, and of maintaining spurs and sidings, and for other purposes incident to performing the business authorized by chapter four hundred and two of the acts of the year nineteen hundred and seven, a street railway company shall not, unless authorized by special act of the general court, construct or operate any part of its railway outside the limits of a public highway, street or bridge; but a street railway company which, prior to the fourteenth day of June in the year nineteen hundred and one, without special legislative authority therefor constructed any part of its railway upon private land, with the consent of the owners of such land, or upon land leased or purchased by such company, or which prior to said date purchased or leased land for the purpose of constructing its railway thereon, or which prior to said date after public notice and a hearing obtained the approval of the board of aldermen of a city or of the selectmen of a town to the construction of a part of its railway upon private land within such city or town, and prior to said date actually with the consent of the owners of the land began, or obtained their consent to begin, such construction, may construct, maintain and operate its railway upon such private land, subject however to the provisions

of this act conferring upon the board of railroad commissioners control over street railways constructed upon private land. [*Approved May 23, 1910.*]

SECTION 43. A street railway company, organized under the laws of this commonwealth, or in process of organization thereunder, having first obtained the approval of the board of aldermen of the city or of the selectmen of the town in which private land is situated to the construction of its railway thereon, may, for the purpose of avoiding grades and curves in public ways, and for such other purposes incidental to the use of such ways, as the board of railroad commissioners may in the manner hereinafter provided approve, petition said board for authority to construct and maintain parts of its railway or extension thereof upon such private land outside the limits of such public ways. The company in such petition shall set forth the purpose for which such authority is desired in each case, and shall file with the petition a plan, in such form and upon such scale as the board of railroad commissioners may prescribe, of the railway or extension, and of the localities where it is desired to construct the same upon private land, and said board, after public notice and a hearing, if it is satisfied that public necessity and convenience demand that parts of the railway or extension should be built outside the limits of public ways, substantially on the private land selected, and that the approval of the board of aldermen or of the selectmen of the city or town in which the land is situated has been obtained as aforesaid, may authorize the petitioner to construct and operate its railway or extension upon and over private land, and for that purpose to purchase or lease private land or rights therein and thereover, in such cases and to such extent as said board is of opinion that public necessity and convenience in the construction and operation of the railway or extension require. Said board in granting such authority may determine the kind of construction to be used, the grade and alignment of the tracks, and may order such special appliances to be furnished and such safeguards to be adopted in the construction and operation of the railway or extension upon private land as, in its judgment, regard for public necessity, convenience and safety demands.

SECTION 44. A street railway constructed upon private land shall not be opened for public use until the board of railroad commissioners, after an examination, certifies that all laws relative to its construction and all requirements of said board have been complied with, and that it appears to be in a safe condition for operation. Said board may, at any time after the opening of a street railway for public use, order such changes and improvements to be made in the construction and operation of any part thereof upon private land as in its judgment may be necessary for public safety in the use thereof; and such order shall be complied with by the street railway company.

Location by
purchase or
lease on
private land.
1901, 503, § 1.
R. L. 112, § 9.
178 Mass. 300.

Regulation of
construction or
operation on
private land.
1901, 503, § 2.
R. L. 112, § 10.

Provisions of law applicable. 1898, 404, § 5. R. L. 112, § 60.

SECTION 45. A street railway company, whose railway is constructed in part outside the limits of public ways, shall, in respect of the equipment, use and operation of its railway and transportation thereon, be subject to all the provisions of law relative to street railway companies, as fully as if its railway were located wholly within the limits of public ways.

Location by eminent domain on private land. 1903, 476, § 1. 213 *Mass.* 60.

SECTION 46. A street railway company, organized under the laws of this commonwealth, may apply to the board of aldermen of a city or to the selectmen of a town in which it desires to take land, for an adjudication that public necessity and convenience require that certain land, or interests in land, as described in its petition, and for the specific purpose therein stated, be taken by such company, to enable it, in constructing its street railway, or extension thereof, to avoid dangerous curves or grades existing in the highways, or for other similar purposes incident to and not inconsistent with its corporate franchise of operating a railway to accommodate public travel in public ways. If the board to which such application is made finds in favor of the petitioner, after such public notice and hearing as are required by law in the case of the grant of locations for street railways in public ways, the company may, upon complying with the provisions prescribed for railroad corporations by section seventeen of Part II, apply to the board of railroad commissioners for a certificate that public necessity and convenience require the construction of the railway between the termini and substantially upon the route fixed by the agreement of association in case of a company organized under the general laws and by the charter of a company created by special statute, or of the extension substantially on the locations already granted therefor, and for approval of the adjudication of the board of aldermen or of the selectmen as to the necessity and reasons for taking land or rights in land in every city or town in which such adjudication has been made. If the board of railroad commissioners, after public notice and a hearing, at which all persons or corporations alleging that they would be injured by the construction of the railway shall be deemed to be interested parties and entitled to be heard, grant the certificate as prayed for, the petitioner may take in any city or town, in the manner provided in the following section, any land or rights in land the taking of which has so been approved by said board.

Map, profile, estimate, etc. [For § 17 of Part II, see p. 52.]

Same subject. 1903, 476, § 2.

SECTION 47. A street railway company acting under authority of the preceding section shall be subject to all the provisions of sections seventy-one, seventy-four, eighty-two to one hundred, inclusive, one hundred and one to one hundred and three, inclusive, and one hundred and six of Part II, and, if its railway crosses a public way or another street railway, except where its railway is constructed within the limits of another public way crossing such way or street railway, it shall also be subject to all the provisions of sections one hundred and seven to one hundred and twelve, inclusive, and of sections one hun-

dred and forty-nine to one hundred and fifty-four, inclusive, of said chapter: *provided, however*, that wherever by said sections any jurisdiction is conferred upon a board of county commissioners, the same shall in the case of a street railway company be exercised by the board of aldermen of the city or by the selectmen of the town in which the land or other property proposed to be taken is situated. Proviso.

SECTION 48. A street railway company authorized to construct its railway at grade across a public way in any place where such crossing is not a part of the crossing of such way by another public way, and incident to the construction of the street railway longitudinally within the limits of such other public way, shall, in any proceedings hereafter begun for the abolition of such grade crossing be considered as a railroad corporation under the provisions of sections twenty-nine to forty-five, inclusive, of Part I, if such company has taken any land or other property under authority of the preceding two sections; and it may bring a petition, or be made a respondent to any petition brought by any of the other parties named in said acts, in the same way and be subject to the same liabilities as if it were a railroad corporation. Location by eminent domain, etc. 1903, 476, § 3.

SECTION 49. The provisions of the three preceding sections shall not be construed as enlarging the extent or purposes for which a street railway may be constructed or operated outside the limits of public ways as defined and limited in sections forty-two and forty-three. Same subject. 1903, 476, § 4.

SECTION 50. If the city council of a city or a town accepts the provisions of this section or has accepted the corresponding provisions of earlier laws, the board or officers authorized to lay out streets, highways or town ways may, whether any such street, highway or town way is laid out under the provisions of law authorizing the assessment of betterments or otherwise, reserve spaces between the side lines thereof for street railways. Reserved spaces in public ways. 1894, 324. R. L. 48, § 85. 191 Mass. 527.

PROTECTION AND MARKING OF WIRES.

Revised Laws, Chapter 122, §§ 16, 17.

SECTION 16. A person or a corporation, private or municipal, owning or operating a line of wires over or under streets or buildings in a city or town shall use only strong and proper wires safely attached to strong and sufficient supports and insulated at all points of attachment; shall remove all wires the use of which is abandoned; shall properly insulate every wire where it enters a building, and, if such wire is other than a wire designed to carry an electric light, heat or power current, shall attach to it at a proper point in the circuit, near the place of entering the building, and so situated as to avoid danger from fire, an appliance adapted at all times to prevent a current of electricity of such intensity or volume as to be capable of injuring electrical instruments or of causing fire from entering the building by means of such wire beyond the point at which such appliance is attached; and shall properly insulate every wire within a building which is designed to carry an electric light, heat or power current. Regulations concerning wires in cities and towns. 1890, 404, § 1. 1899, 337, § 1. 161 Mass. 583. 178 Mass. 503. 185 Mass. 214, 218.

Names of owners to be attached.
1890, 404, § 2.
1899, 320; 337, § 2.
Amended,
1911, 509, § 3;
see p. 196.

[SECTION 17. Such person or corporation shall, in cities, affix at the points of support at which any wire or cable containing wires provided for in the preceding section is attached, a tag or mark distinctly designating the owner or user of such wire or cable. No such tag or mark shall be required for the wires of a street railway company, except for its feed wires at points of attachment to poles carrying the feed wires of one or more other street railway companies. In towns wherever wires belonging to different owners are attached to the same pole, cross arm or fixture, such pole, cross arm or fixture shall be plainly marked with the name or initials of the owner of the same, and such wires, at or near their points of attachment to such pole, cross arm or fixture, shall be tagged or marked with the names or initials of their owners.]

Acts of 1911, Chapter 509.

An Act relative to the Transmission of Electricity.

R. L. 122, § 1,
amended.

Transmission
of electricity.

SECTION 1. Chapter one hundred and twenty-two of the Revised Laws is hereby amended by striking out section one and inserting in place thereof the following:— *Section 1.* A company which is incorporated for the transmission of intelligence by electricity or by telephone, whether by electricity or otherwise, or for the transmission of electricity for lighting, heating or power, or for the construction and operation of a street railway or an electric railroad, may, under the provisions of the following sections, construct lines for such transmission upon, along, under and across the public ways and across and under any waters within the commonwealth, by the erection or construction of the poles, piers, abutments, conduits and other fixtures, except bridges, which may be necessary to sustain or protect the wires of its lines; but such company shall not incommode the public use of public ways or endanger or interrupt navigation.

R. L. 122, § 2,
etc., amended.

Granting of
locations for
poles and
wires, etc.

SECTION 2. Section two of chapter one hundred and twenty-two of the Revised Laws, as amended by chapter two hundred and thirty-seven of the acts of the year nineteen hundred and three, and by chapter one hundred and seventeen of the acts of the year nineteen hundred and six, is hereby further amended by striking out said section and inserting in place thereof the following:— *Section 2.* A company desiring to construct a line for such transmission upon, along, under or across a public way shall in writing petition the mayor and aldermen of the city or the selectmen of the town in which it is proposed to construct such line for permission to erect or construct upon, along, under or across said way the wires, poles, piers, abutments or conduits necessary therefor. A public hearing shall be held on the petition, and written notice of the time and place of the hearing shall be mailed at least seven days prior thereto by the clerk of the city or by the selectmen of the town to all owners of real estate abutting upon that part of the way upon, along, across or under which the line is to be constructed, as such ownership is determined by the last preceding assessment for taxation. After a public hearing as aforesaid, the mayor and aldermen, or the selectmen may by order grant to the petitioner a location for such line, specifying therein where the poles, piers, abutments or conduits may be placed, and in respect to overhead lines may also specify the kind of poles, piers or abutments which may be used, the number of wires or cables which may be attached thereto, and the height to which the wires or cables may run.

Increase in
number of
poles and
wires, etc.

After the erection or construction of such line the mayor and aldermen or selectmen may, after giving the company or its agents an opportunity to be heard, or upon petition of the company without notice or hearing, by

order permit an increase in the number of wires or cables, and direct an alteration in the location of the poles, piers, abutments or conduits or in the height of the wires or cables. The mayor and aldermen or selectmen may, upon petition in writing by two or more companies subject to the provisions of this chapter, without notice or hearing, by order authorize any such company to attach its wires and fixtures to existing poles, piers or abutments of either or any of the other petitioners, or to maintain its wires or cables in the conduits of either or any of said other petitioners. The mayor and aldermen or selectmen may, upon petition in writing by two or more companies subject to the provisions of this chapter, and after notice to abutting landowners and a hearing as hereinbefore provided, by order grant to said companies joint or identical locations for the erection or construction of poles, piers, abutments or conduits to be owned and used in common by them. No order of the mayor and aldermen or selectmen shall be required for renewing, repairing or replacing wires, cables, poles, piers, abutments, conduits or fixtures once erected or constructed under the provisions of law, or for making house connections or connections between duly located conduits and distributing poles.

The order granting a location or an alteration thereof, or authorizing an increase in the number of wires or cables or attachments, such as are hereinbefore described, shall be recorded by the clerk of the city or of the town in books kept exclusively for the purpose, and where notice has been given as hereinbefore provided the clerk of the city or the chairman or a majority of the selectmen shall certify on said record that the order was adopted after due notice and a public hearing as hereinbefore prescribed, and no such order shall be valid without such certificate. The company or companies in whose favor the order is made shall pay for such record the same fees as are allowed for the entering and recording of deeds by registers of deeds, and shall be entitled to attested copies of said orders and certificates upon payment of the same fees as are allowed to registers of deeds for copies.

Order granting increase to be recorded, etc.

The mayor and aldermen or selectmen may under the provisions of this section authorize the attachment of the wires and fixtures of a street railway or electric railroad company to the poles, piers and abutments of another owner, or the attachment of the wires and fixtures of another owner to the poles, piers and abutments of such company, and may grant joint or identical locations for the erection or construction of poles, piers or abutments to be owned and used in common by such company and another owner or other owners, and locations for the transmission lines and telephone, signal and feed wires of such company in public ways or parts thereof, other than those public ways or parts thereof in which the tracks of such company are laid, and locations for additional poles to support, or alterations of locations for existing poles supporting, trolley or span wires; and all locations granted to a street railway or electric railroad company hereunder shall be subject only to revocation as provided in section sixty-six of Part III of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six; but nothing contained in this section save as hereinbefore expressly set forth shall be held to apply to the poles, wires and other appliances and equipment which a street railway or electric railroad company, by a grant of location, or extension or alteration thereof, under any general or special law now or hereafter in force relating to street railways or electric railroads may be authorized to construct, maintain and operate in a public way; and no terms, restrictions and obligations, other than such as may be imposed upon a grant of location for a street railway or electric railroad, or an extension or alteration thereof, under any general or special law now or hereafter in force relating thereto,

Other wires may be attached, etc.

shall be imposed upon locations granted to a street railway or electric railroad company hereunder, save locations for its transmission lines or telephone, signal or feed wires in public ways or parts thereof other than those public ways and parts thereof in which the tracks of such company are laid.

R. L. 122, § 17,
amended.

Poles, etc., to
be marked,
etc.

SECTION 3. Chapter one hundred and twenty-two of the Revised Laws is hereby amended by striking out section seventeen and inserting in place thereof the following:— *Section 17.* Such person or corporation shall plainly mark each pole, pier, abutment, or other fixture supporting wires or cables containing wires over streets or buildings with the name or initials of the owner of such pole, pier, abutment or other fixture. Wherever cross arms or other appliances for the support of wires or cables belonging to different owners are attached to the same pole, pier, abutment or other fixture, every such cross arm or other appliance shall plainly be tagged or marked with the name or initials of the owner thereof. Wherever wires or cables belonging to different owners are attached to the same cross arm or other appliances for the support of wires or cables, every wire or cable shall be tagged or marked with the name or initials of the owner at or near its point of attachment to such cross arm or other appliance. No such tag or mark shall be required for the wires, poles, piers, abutments and other fixtures of a street railway or electric railroad company, except for its feed wires supported by poles carrying wires or cables belonging to another owner, and for its poles supporting wires or cables belonging to another owner, and for poles belonging jointly to the street railway company and another owner.

R. L. 122, § 20,
amended.

Insulation of
poles, etc.

SECTION 4. Chapter one hundred and twenty-two of the Revised Laws is hereby amended by striking out section twenty and inserting in place thereof the following:— *Section 20.* Poles and other structures which are used to support lines for the transmission of electricity shall be insulated in such manner as to protect employees and other persons from accidents. If such poles and other structures are of any material except wood, and support lines which are operated at a voltage in excess of two thousand volts, they shall be plainly and conspicuously marked "Dangerous. Keep Away." The officer and inspector of wires appointed under the authority of section eighteen of said chapter one hundred and twenty-two, or the commissioner of wires of the city of Boston, shall enforce the provisions of this section, and he shall be the sole judge of what constitutes a proper insulation and marking.

R. L. 122, § 23,
amended.

Name of corporation, etc.,
to be attached,
etc.

SECTION 5. Chapter one hundred and twenty-two of the Revised Laws is hereby amended by striking out section twenty-three and inserting in place thereof the following:— *Section 23.* A corporation or person maintaining or operating telephone, telegraph or other electric wires shall, at all places where such wires are affixed by any pole, structure or fixture to the property of another, mark such pole, structure or fixture in a clear, durable and legible manner with the name or initials of the corporation or person maintaining or operating such wires, and any corporation or person failing to comply with the provisions of this section shall be punished by a fine of not more than one hundred dollars.

R. L. 122, § 28,
amended.

Wires may be
cut, etc.

SECTION 6. Chapter one hundred and twenty-two of the Revised Laws is hereby amended by striking out section twenty-eight and inserting in place thereof the following:— *Section 28.* Whenever, in order to move a building or for any other necessary purpose, a person desires that the wires of any such company be cut, disconnected or removed, the company shall forthwith cut, disconnect or remove the same, if the person desiring this to be done has first left a written statement, signed by him, of the time when, and the place, described by reference to the crossings of streets

or highways, where he wishes to remove said wires, at the office of the company in the town in which such place is situated, twenty-four hours before the time so stated, or, if there is no such office, if he has deposited such statement in the post office, properly prepaid, and directed to the company at its office nearest to said place, three days before the time mentioned in said statement. If the company neglects or refuses to cut, disconnect or remove wires as hereinbefore provided, the inspector of wires, or the selectmen of a town where there is no inspector of wires, may cause the same to be cut, disconnected or removed, and the city or town may recover of the company in an action of contract the expense of so doing.

SECTION 7. No ordinance or regulation of a city or town, or regulation or restriction imposed in a grant of location, affecting the erection, maintenance or operation of a line for the transmission of electricity for light, heat or power extending or intended to extend from some point in one city or town through, or to some point in another city or town, shall take effect until the same shall have been approved by the board of gas and electric light commissioners in the case of electric light, heat or power companies, and by the board of railroad commissioners in the case of street railway and electric railroad companies.

When ordinance or regulation shall take effect.

SECTION 8. Any company subject to the provisions of chapter one hundred and twenty-two of the Revised Laws, except a telegraph or telephone company, desiring to construct a line for the transmission of electricity which will of necessity pass through one or more cities or towns to connect the proposed termini of such line, whose petition for the location necessary for such line has been refused, or has not been granted within three months after the filing thereof by the mayor and aldermen of a city or the selectmen of a town through which said company intends to construct such line for the purpose aforesaid, may apply, in the case of electric light, heat or power companies to the board of gas and electric light commissioners, and in the case of street railway and electric railroad companies to the board of railroad commissioners, for such location. The board to which such application is made shall give a public hearing thereon after notice to the mayor and aldermen of the city or to the selectmen of the town refusing or neglecting to grant such location, and to all persons owning real estate abutting upon any way in said city or town in which such location is asked for, as such ownership is determined by the last assessment for taxation. Said board shall, if requested by the mayor and aldermen or the selectmen, hold said hearing in the city or town in which the location is asked for. If it shall appear at the hearing that the company has already been granted and has accepted a location for such line in two cities, or in two towns, or in a city and town, adjoining the city or town because of the refusal or neglect of whose mayor and aldermen or selectmen to grant a location therefor the application is made, and if in the judgment of said board the location is necessary for the public convenience, and will be in the public interest, said board may by order grant a location for such line in the city or town with respect to which the application is made, and shall have and exercise relative thereto the same powers and authority conferred by section two of this act upon the mayor and aldermen or selectmen, and in addition to the provisions of law governing such company may impose such other terms, limitations and restrictions as the public interest may in its judgment require. Said board shall cause an attested copy of its order, with the certificate of its clerk, endorsed thereon, that the order was adopted after due notice and a public hearing as hereinbefore prescribed, to be forwarded to the clerk of the city or of the town, as the case may be, and the clerk of the city or

Duties of the gas and electric light commissioners, etc.

Hearing to be given.

Copy of order to be forwarded to clerks of cities or towns.

of the town shall record the same and shall furnish attested copies thereof upon the terms and in the manner specified in section two of this act.

SECTION 9. This act shall take effect upon its passage. [*Approved June 2, 1911.**]

Revised Laws, Chapter 121, § 40.

Penalty for unlawful diversion of electricity, etc. 1895, 330. Amended by 1908, 243.

SECTION 40. Whoever unlawfully and intentionally injures or destroys, or suffers to be injured or destroyed, any meter, pipe, conduit, wire, line, pole, lamp or other apparatus belonging to a *street railway company, an electric railroad company or a corporation, private or municipal*, or company engaged in the manufacture or sale of electricity for lighting purposes, or unlawfully and intentionally prevents an electric meter from duly registering the quantity of electricity supplied, or in any way interferes with its proper action or just registration, or, without the consent of such corporation or company, unlawfully and intentionally diverts any electric current from any wire of such corporation or company, or otherwise unlawfully and intentionally uses or causes to be used, without the consent of such corporation or company, any electricity manufactured or distributed by such corporation or company, shall, for every such offence, be punished by a fine of not more than one hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

Acts of 1908, Chapter 243.

An Act to protect Street Railway Companies, Electric Railroad Companies and Municipalities engaged in the Manufacture or Sale of Electricity for Lighting Purposes from the Unlawful Use of or Diversion of Electricity from their Wires.

R. L. 121, § 40, amended.

Section forty of chapter one hundred and twenty-one of the Revised Laws is hereby amended by inserting after the word "to", in the third line, the words: — a street railway company, an electric railroad company or, — and by inserting after the word "corporation", in the fourth line, the words: — private or municipal, — so as to read as follows: — *Section 40.* [*For § 40 as amended, see above.*]

DESTRUCTION OF LINE, WIRE, POLES, ETC.

Acts of 1908, Chapter 233.

An Act to extend the Provisions of Section Twenty-seven of Chapter One Hundred and Twenty-two of the Revised Laws to Street Railway Companies, Electric Railroad Companies and Municipalities engaged in the Manufacture and Sale of Electricity, and to increase the Penalty therein provided in Certain Cases.

R. L. 122, § 27, amended. For R. L. 122, § 27, see p. 282.

Section twenty-seven of chapter one hundred and twenty-two of the Revised Laws is hereby amended by inserting after the word "property", in the third line, the words: — of any street railway company, of any electric railroad company, or of any city or town engaged in the manufacture and sale of electricity for light, heat or power or, — and by adding at the end thereof the words: — and whoever shall do any of the acts prohibited by this section between the hours of four o'clock in the afternoon and seven o'clock in the morning shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than four years, or by both such fine and imprisonment, — so as to read

* For full text of Revised Laws, chapter 122, as amended, see last section of this compilation, pages 274 to 283.

as follows: — *Section 27.* Whoever unlawfully and intentionally injures, molests or destroys any line, wire, pole, pier or abutment, or any of the materials or property of any street railway company, of any electric railroad company, or of any city or town engaged in the manufacture and sale of electricity for light, heat or power or of any company, owner or association described in sections one and twenty-five shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than two years, or by both such fine and imprisonment; and whoever shall do any of the acts prohibited by this section between the hours of four o'clock in the afternoon and seven o'clock in the morning shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than four years, or by both such fine and imprisonment. [Approved March 18, 1908.]

Destruction
of wires, poles,
etc. Penalty.

LEASE OR SALE OF RAILWAY.

SECTION 51. A street railway company shall not lease or contract for the operation of its railway for a period of more than ninety-nine years without the consent of the general court, nor, except as provided in the three following sections, shall it sell its railway unless authorized so to do by its charter or by special act of the general court. 157 Mass. 39. 173 Mass. 287.

Railway not to
be leased or
sold, except,
etc.
1864, 229, § 24.
1871, 331, § 31.
P. S. 113, § 56.
1897, 213, § 3.
R. L. 112, § 85.
11 Allen, 65.
127 Mass. 204.

SECTION 52. A street railway company incorporated under the laws of this commonwealth may sell and convey the whole or a part of its franchise and property to, or may consolidate with, any other such street railway company whose railway connects with, intersects or forms a continuous line with its own, if the facilities for travel on the railway of each of said companies shall not be thereby diminished, or the rates of fare increased, and such other company may purchase of or consolidate with it as aforesaid; but such purchase and sale or consolidation shall not be valid or binding until its terms have been agreed to by a majority of the directors, and have been approved, at meetings called for the purpose, by a vote of two thirds in interest of the stockholders of each of the contracting companies, and by the board of railroad commissioners as required by section sixty-seven of Part I. *Whenever a street railway company sells and conveys the whole or a part of its franchise and property to, or consolidates with, any other street railway company, every stockholder of both the purchasing or consolidated company and of the selling company shall be deemed to assent to the terms of purchase and sale or of consolidation, when approved by the board of railroad commissioners in accordance with any provisions of law requiring such approval, unless, within thirty days after the date of such approval, he shall file with the clerk of said board a writing, declaring his dissent from said terms and stating the number of shares held by him and the number of the certificate or certificates evidencing the same: provided, however, that, as against any stockholder under any legal incapacity to act for himself and having no legal guardian, said period of thirty days shall not begin to run until the removal of such incapacity by the appointment of a legal guardian, or other-*

Sale or
consolidation.
1897, 269, § 1.
R. L. 112, § 86.
199 Mass. 289.
206 Mass. 215.
209 Mass. 214.
Amended by
1911, 357.
See 1912, 644.
[For section 67,
Part I, see
p. 43.]

Consolidation
of street rail-
way com-
panies, etc.

Proviso.

Valuation of shares of dissenting stockholders, etc.

wise. The shares of any stockholder so dissenting, shall be acquired by the purchasing or consolidated company, and shall be valued, and the value thereof be paid or tendered to, or deposited to or for the account of, such stockholder in the manner following: Within sixty days after the filing as aforesaid of his dissent from the terms of such sale or consolidation, the said dissenting stockholder or the purchasing or consolidated company shall file a petition with the supreme judicial court, sitting within and for the county in which said stockholder resides or in any county in which said company operates any part of its railway, which petition, if filed by the company in a county other than that of the stockholder's residence, may upon his application be removed to the county in which the said stockholder resides, setting forth the material facts and praying that the value of such dissenting stockholder's shares may be determined. Thereupon, after such notice to all parties concerned as it may deem proper, said court shall make an order requiring such dissenting stockholder's certificate or certificates of stocks to be deposited with the clerk of said court, and shall appoint three commissioners to ascertain and report the value of such dissenting stockholder's shares on the day of the approval by the board of railroad commissioners of the terms of the agreement of purchase and sale or consolidation. Said report shall be made to the court as soon as is practicable, and, after due notice to the parties in interest, shall be accepted by the court, unless before such acceptance either of the parties to said proceeding shall claim a trial by jury, in which case the court shall order the value of said shares to be tried and determined by a jury in the same manner as other civil cases are tried in said court. The said commissioners' report, or the verdict, when accepted by the court, shall be final and conclusive as to the value of such dissenting stockholder's shares, and the amount so ascertained as such value shall at once be paid or tendered to such stockholder; or, if such payment or tender be impracticable for any cause, shall be paid into court. Upon such payment or tender or deposit, the shares of such dissenting stockholder and the certificate or certificates thereof shall become the property of the purchasing or consolidated company, whose right and title thereto may be enforced by the court by any appropriate order or process. Exceptions may be taken to any ruling or order of said court, to be heard and determined by the full court as in other civil cases; and said court may make all such orders for the enforcement of the rights of any party to the proceedings, for the consolidation of two or more petitions and their reference to the same commissioners, for the consolidation of claims for a jury trial and the trial of two or more cases by the same jury, and for the payment of interest upon the value of a stockholder's share as determined, and the payment of costs by one party to the other, as justice and equity, and the speedy settlement of the matters in controversy may require.

Commissioners' report to be final and conclusive, etc.

Exceptions.

Acts of 1911, Chapter 357.

An Act relative to the Dissent of Stockholders when Street Railway Companies sell their Franchises and Property or consolidate with Other Companies.

SECTION 1. Section fifty-two of Part III of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby amended by adding at the end thereof the following:— [*For § 52, as amended, see above.*]

SECTION 2. This act shall take effect upon its passage. [*Approved April 29, 1911.*]

SECTION 53. The purchasing or consolidated company may, subject to the provisions of section one hundred and seven, increase its capital stock and issue bonds to an amount necessary for the purposes authorized in the preceding section, and may exchange its securities for those of the selling or merged company, if the aggregate amount of the capital stock and debt of the two contracting companies shall not by reason of such purchase and sale or consolidation be increased.

SECTION 54. Such purchasing or consolidated company shall have the powers and privileges, and be subject to the duties, liabilities and restrictions, of the company selling or merged, but, except as provided in this chapter, no right to conduct an express business or to be a common carrier of merchandise shall, by reason of any such sale or consolidation, be allowed over any location where it had not been granted prior to the tenth day of April in the year eighteen hundred and ninety-seven.

Acts of 1910, Chapter 443.

An Act relative to the Purchase by Street Railway Companies of Property of Foreign Companies.

SECTION 1. A street railway company incorporated under the laws of this commonwealth may purchase from any such company incorporated under the laws of another state so much of the railway, franchise and property of such other company as is located or used and exercised within this commonwealth when the railway of such other company connects with, intersects, or forms a continuous line with that of the purchasing company: *provided, however*, that the facilities for travel on the railway of each of said companies within this commonwealth shall not thereby be diminished, or the rates of fare increased; and *provided, further*, that no such purchase shall be valid or binding until the terms thereof have been approved by the board of railroad commissioners, as required by section sixty-seven of Part I of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six, and by any other acts applicable to such approval.

SECTION 2. This act shall take effect upon its passage. [*Approved April 25, 1910.*]

SECTION 55. Two street railway companies, incorporated under the laws of this commonwealth, whose railways connect with or intersect each other or together form a continuous line,

1906, 463,
Part III, § 52
amended.Increase of
capital stock,
and issue of
bonds.
1897, 269, § 2.
R. L. 112, § 87.
207 Mass. 515.
209 Mass. 214.Powers and
duties of
consolidated
company.
1897, 269, § 3.
R. L. 112, § 88.
209 Mass. 214.Purchase of
property of
foreign com-
panies by
street rail-
way com-
panies, etc.For Part I,
§ 67, see p. 43.Operating
contracts and
leases.
1897, 213,
§§ 1, 2.

R. L. 112, § 89.
See 1911, 487;
1912, 644.

[For Part I,
§ 67, see
p. 43.]

Powers under
contracts or
leases.
1897, 213, § 4.
R. L. 112, § 90.

Proceeds of
sale not to
be used for
dividends.
1864, 229, § 39.
1871, 381, § 51.
P. S. 113, § 57.
R. L. 112, § 91.

Issue of stock
by foreign
companies
on securities
of domestic
companies.
1894, 476.
R. L. 126, § 11.

may contract that either company shall perform all the transportation upon and over the whole or any part of the railway of the other; or any such company may lease its franchise, property and railway to any other such company; but the facilities for travel on either of the railways of said companies shall not be thereby diminished or the rates of fare increased. Such contract or lease shall not be valid or binding until its terms have been agreed to by a majority of the directors, and have been approved, at meetings called for the purpose, by a vote of a majority in interest of the stockholders of each of said companies, and by the board of railroad commissioners as required by section sixty-seven of Part I. The income arising from such contracts or leases shall be subject to the provisions of law relative to the reduction of fares in the same manner as that arising from the use of the railways. Such railways shall be considered as connecting with or intersecting each other, or forming a continuous line, if one of them connects with or intersects or forms a continuous line with a railway leased to or operated by the other under a contract authorized by the provisions of this section.

SECTION 56. A street railway company which contracts for the operation, or takes a lease, of another railway shall, subject to the terms of such contract or lease, have and enjoy the powers and privileges, and shall be subject to the duties, liabilities and restrictions of the company which owns it; but no right to carry on an express business or to be a common carrier of merchandise shall be allowed, except as provided in this act, over any location where it had not been granted prior to the twenty-ninth day of March in the year eighteen hundred and ninety-seven.

SECTION 57. A street railway company shall not appropriate for the payment of dividends any money which has been received from the sale of any portion of its railway, unless it first reduces its capital stock issued, by an amount which, at its par value, is equal to the amount which such portion of its railway cost said company.

ISSUE OF SECURITIES BY FOREIGN CORPORATIONS.

SECTION 58. If a foreign corporation which owns or controls a majority of the capital stock of a domestic street railway company issues stock, bonds or other evidences of indebtedness based upon or secured by the property, franchise or stock of such domestic company, unless such issue is authorized by the law of this commonwealth, the supreme judicial court shall have jurisdiction in equity in its discretion to dissolve such domestic company. If it appears to the attorney-general that such issue has been made, he shall institute proceedings for such dissolution and for the proper disposition of the assets of such company. The provisions of this section shall not affect the right of foreign corporations, their officers or

agents to issue stock and bonds in fulfilment of contracts existing on the fourteenth day of July in the year eighteen hundred and ninety-four.

ELECTRICITY.

SECTION 59. A city or a town shall not manufacture or distribute electricity for furnishing light, heat or power for the operation of the cars of a street railway company.

1891, 370, § 1.
1894, 533.

R. L. 34, § 1.
150 Mass. 592.

153 Mass. 129.
155 Mass. 601, 605.

163 Mass. 346.

Cities and towns not to manufacture or distribute electricity for operation of cars.

SECTION 60. A town in which no person or corporation is engaged in the business of generating or distributing electricity for sale for lighting purposes and which is not itself engaged in such business, and which has voted or shall vote, in accordance with the provisions of chapter thirty-four of the Revised Laws, to construct one or more plants for the manufacture or distribution of electricity for furnishing light for municipal use or for the use of its inhabitants, or for both purposes, may make contracts, for a term not exceeding ten years, with any street railway company operating a street railway in such town, for the purchase of electricity from such street railway company, for the purpose of furnishing light for municipal use or for the use of its inhabitants, or for both purposes; and any street railway company may make contracts for furnishing electricity as aforesaid to a town, but the same shall not become operative unless the board of railroad commissioners shall, after public notice and a hearing, approve the terms thereof as consistent with the public interests.

Certain towns may purchase electricity for lighting purposes from street railway companies. 1902, 449, § 1. [Amended. See 1906, 218.]

Acts of 1906, Chapter 218.

An Act relative to the Purchase of Electricity by Towns from Street Railway Companies.

Section one of chapter four hundred and forty-nine of the acts of the year nineteen hundred and two is hereby amended by striking out the words "and which is not itself engaged in such business", in the third and fourth lines, and by inserting after the word "light", in the eighth and fourteenth lines, the words: — or power, — so as to read as follows:

1902, 449, § 1, amended.

— *Section 1.* A town in which no person or corporation is engaged in the business of generating or distributing electricity for sale for lighting purposes, and which has voted or shall vote, in accordance with the provisions of chapter thirty-four of the Revised Laws, to construct one or more plants for the manufacture or distribution of electricity for furnishing light or power for municipal use or for the use of its inhabitants, or for both purposes, may make a contract or contracts, for a term not exceeding ten years, with any street railway company or companies operating a street railway in such town, for the purchase of electricity from such street railway company or companies, for the purpose of furnishing light or power for municipal use or for the use of its inhabitants, or for both purposes; and street railway companies may make contracts for furnishing electricity as aforesaid to a town, but the same shall not become operative unless the board of railroad commissioners shall, after a public hearing, approve the terms thereof as consistent with the public interests. [Approved March 31, 1906.]

Certain towns may purchase electricity from street railway companies.

Delivery of
electricity.
1902, 449, § 2.

SECTION 61. The electricity supplied by a street railway company to a town shall be delivered to the distributing system of said town at some specified place or places therein, and the meter or meters through which such electricity is measured shall be a part of the distributing system.

In case of
disagreement,
railroad com-
missioners to
fix price of
electricity.
1902, 449, § 3.

SECTION 62. If a town voting to purchase electricity from a street railway company is unable to agree with such company at the expiration of a contract made in accordance with the provisions of section sixty upon the price to be paid for electricity by, or upon the manner in which electricity is to be furnished to, said town in the future, such town through its selectmen may apply to the board of railroad commissioners to fix the price which said town shall pay for said electricity to, and the manner in which electricity shall be furnished by, said company; and thereupon the said board shall set a date for a public hearing upon such application, giving said company reasonable notice thereof; and after the hearing said board shall, if it deems the furnishing of such electricity consistent with the interests of public travel upon the railway of such company, fix the price which said town shall pay for electricity to, and the manner in which electricity shall be furnished by, said company; and said company shall thereupon furnish to said town electricity at the price and in the manner fixed by said board.

To be subject
to certain pro-
visions of law.
1902, 449, § 4.

SECTION 63. A town which has contracted with a street railway company for the purchase of electricity shall be subject to the provisions of chapter thirty-four of the Revised Laws and of all acts in amendment thereof or in addition thereto, so far as the same may be applicable.

EXTENSION OF LOCATION.

Extension of
location.
1874, 29, § 11.
P. S. 113, § 21.
1898, 578, § 15.
R. L. 112, § 30.
1902, 399.
121 Mass. 485.
[1 Op. A. G.
392, 489.]
213 Mass. 105.
Amended by
1909, 417, § 2.
See 1909, 417,
§ 6.
See 1911, 442,
609.

SECTION 64. The board of aldermen of a city or the selectmen of a town, upon the petition of fifty legal voters, or [the president or a majority of the directors] upon the petition executed in accordance with the by-laws or a vote of the directors of a street railway company whose tracks are located in said city or town, after public notice and a hearing as provided in section seven, may grant a location for the extension of the tracks of such company, and prescribe how said tracks shall be laid and the kind of rails, poles, wires and other appliances to be used; but they shall impose no terms or conditions to such grant in addition to those imposed by general laws on street railway companies in force on the first day of October in the year eighteen hundred and ninety-eight, or such as may have been imposed in the grant of original location to such company in such city or town subsequently to said date. No such extension of a location shall be valid, until the board of railroad commissioners, after public notice and a hearing, shall certify that such extension is consistent with the public interests. If said board requires an alteration in such extension before certifying that the same is consistent with the public interests, said board

shall notify the board of aldermen or selectmen granting such extension of such alteration; and thereafter said board of aldermen or selectmen may amend such extension in accordance with such alteration: *provided*, that, if such alteration involves a change in the route of the railway, public notice and a hearing shall be given as hereinbefore provided in the case of the original application for an extension; and thereafter the board of railroad commissioners may, as a part of the original proceedings before it, certify that such extension so amended is consistent with the public interests. An extension, so certified to be consistent with the public interests, shall be a valid location, if, within [thirty] *sixty* days after the issue of notice of said certification to the company, [a majority of the directors] *it* shall file a written acceptance of such extension, *executed in accordance with its by-laws or a vote of its directors* with the board of aldermen or selectmen. An extension granted by a board of aldermen or selectmen, but refused certification hereunder by the board of railroad commissioners, or not accepted as hereinbefore provided, shall be void.

Acts of 1909, Chapter 417, § 2.

SECTION 2. Section sixty-four of Part III of said chapter four hundred and sixty-three is hereby amended by striking out the words "the president or a majority of the directors", in the third line, and inserting in place thereof the words: — upon the petition executed in accordance with the by-laws or a vote of the directors, — by striking out the word "thirty", in the thirty-third line, and inserting in place thereof the word: — sixty, — by striking out the words "a majority of the directors", in the thirty-fourth and thirty-fifth lines, and inserting in place thereof the word: — it, — and by inserting after the word "extension", in the thirty-fifth and thirty-sixth lines, the words: — executed in accordance with its by-laws or a vote of its directors, — so as to read as follows: — *Section 64. [For § 64 as amended, see above.]*

1906, 463,
Part III, § 64,
amended.
*See 1911, 442,
481, 509.*

ALTERATION OF LOCATION.

SECTION 65. The board of aldermen of a city or the selectmen of a town, upon the petition [of the president, or a majority of the directors] *executed in accordance with the by-laws or a vote of the directors* of a street railway company whose tracks are located in said city or town, or upon the petition of any interested party, after public notice and a hearing as provided in section seven, may alter the location of the tracks in the manner prescribed in, and subject to the provisions of, the preceding section. Such alteration shall be made by such company within such time, and the expense thereof shall be borne by such party or parties and in such proportions, as the board of aldermen or selectmen may determine. No such alteration of a location shall be valid, until the board of railroad commissioners, after public notice and a hearing, shall certify that such alteration is consistent with the public interests. If said board requires an amendment to such alteration before certifying

Alteration of
location.
1864, 229, § 14.
1871, 381, § 15.
P. S. 113, § 22.
1898, 578, § 16.
R. L. 112, § 31.
1902, 399.
125 Mass. 516.
158 Mass. 569.
[1 Op. A. G.
392, 489.]
213 Mass. 105.
*Amended by
1909, 417, § 3.
See 1909, 417,
§ 6.
See 1911, 442,
509.*

that the same is consistent with the public interests, said board shall notify the board of aldermen or selectmen of such amendment; and thereafter said board of aldermen or selectmen may amend such alteration in accordance with the said amendment: *provided*, that, if such amendment involves a change in the route of the railway, public notice and a hearing shall be given as hereinbefore provided in the case of the original application for an alteration; and thereafter the board of railroad commissioners may, as a part of the original proceedings before it certify that such alteration so amended is consistent with the public interests. An alteration, so certified to be consistent with the public interests, shall be a valid location, if, within [thirty] *sixty* days after the issue of notice of said certification to the company, [a majority of the directors] *it* shall file a written acceptance of such alteration, *executed in accordance with its by-laws or a vote of its directors*, with the board of aldermen or selectmen.

Acts of 1909, Chapter 417, § 3.

1906, 463,
Part III, § 65,
amended.
See 1911, 442,
481, 509.

SECTION 3. Section sixty-five of Part III of said chapter four hundred and sixty-three is hereby amended by striking out the words "of the president or a majority of the directors", in the second and third lines, and inserting in place thereof the words: — executed in accordance with the by-laws or a vote of the directors, — by striking out the word "thirty", in the thirtieth line, and inserting in place thereof the word — sixty, — by striking out the words "a majority of the directors", in the thirty-first and thirty-second lines, and inserting in place thereof the word: — it, — and by inserting after the word "alteration", in the thirty-second and thirty-third lines, the words: — executed in accordance with its by-laws or a vote of its directors, — so as to read as follows: — *Section 65.* [For § 65 as amended, see above.]

Acts of 1910, Chapter 518.

An Act relative to Temporary Locations for Street Railway Companies.

Temporary locations may be granted street railway companies. See 1911, 442.

The several boards and commissions authorized by law to grant locations to street railway companies may, for the purpose of enabling any such company to avoid interruption of its service, upon the petition of such company or of any interested party, grant temporary locations for the tracks of the company in any public place or way, or may approve temporary locations upon private land without a notice and hearing. The board or commission granting or approving such temporary locations may place a limit of time upon their use, and if unlimited as to time such use shall terminate after such reasonable time as, in the opinion of the board or commission granting or approving the same, will permit, without interruption, the restoration of service upon the locations of the company. The board of railroad commissioners may approve such temporary locations without a notice and hearing. [Approved May 13, 1910.]

REVOCATION OF LOCATION.

Revocation of location. 1864, 229, § 15. 1871, 381, §§ 16, 17.

SECTION 66. The board of aldermen of a city or the selectmen of a town, after the expiration of one year from the opening for use of a street railway in their city or town, and after

public notice and a hearing as provided in section seven, if the public necessity and convenience in the use of the streets so require, may, for good and sufficient reasons to be stated in the order therefor, revoke the location of a street railway in any highway or street in said city or town; but unless, within thirty days after such order of revocation, the company consents thereto in writing, such order shall not be valid until approved by the board of railroad commissioners after public notice and a hearing. Upon the approval of such order of revocation, the company shall remove the railway in conformity with such order and shall put the surface of streets which has been disturbed by such removal into as good condition as the adjacent surface of said streets. If the company neglects to comply with such order after thirty days' notice of the approval thereof, the board of aldermen or the selectmen may cause it to be executed and the work to be done at the expense of the company, and such expense shall be recovered in an action of tort

P. S. 113,
§§ 23, 24.
1898, 578, § 17.
R. L. 112, § 32.
111 Mass. 232.
191 Mass. 527.
199 Mass. 398.
See 1911, 442.
600.

STREET OR HIGHWAY WIDENING.

SECTION 67. If application is made for a location in a street or highway in which no street railway tracks are located, and such street or highway is widened under the provisions of chapters forty-eight or fifty of the Revised Laws by an order declaring the widening to be rendered necessary for the public convenience for the purpose of granting such location of street railway tracks therein, a proportionate share of the expense of such widening may be assessed upon a street railway company which accepts a location in the street or highway so widened; but the amount of such assessment, in addition to the amounts assessed on real estate, shall not exceed one half of the total cost of such widening.

Street or high-
way widening.
1898, 578, § 19.
R. L. 112, § 33.

SECTION 68. If a street or highway in which the tracks of a street railway company have been located for a period of five years is altered, or if the grade thereof is changed under the provisions of chapters forty-eight or fifty of the Revised Laws, the company shall pay such proportionate share of the expense thereof, including therein the necessary cost of changing its railway to conform to such alteration or change of grade, as may be assessed upon it, provided that, if betterments are assessed, no such assessment on the company shall exceed the aggregate amount of all the betterments assessed upon real estate, and that in no case shall such assessment exceed one quarter of the total cost of such alteration or change of grade.

Alteration or
change in
grade of street
or highway.
Betterments.
1898, 578, § 20.
R. L. 112, § 34.
See 1907, 574,
§ 6.

SECTION 69. The provisions of chapter fifty of the Revised Laws relative to the assessment of betterments on real estate, so far as applicable, shall apply to assessments made under the provisions of the two preceding sections. Said assessments shall be collected according to the provisions of chapter thirteen of the Revised Laws.

Provisions
of law
applicable to
1898, 578, § 21.
R. L. 112, § 35.

STATE HIGHWAYS.

Location upon state highways. 1901, 414. R. L. 112, § 38. Amended by 1909, 417, § 4. See 1909, 417, § 6.

SECTION 70. If the board of aldermen of a city or the selectment of a town and [the president or a majority of the directors of] a street railway company having a location in a way which said board of aldermen or said selectmen or the county commissioners of the county in which said city or town lies, have in writing requested the commonwealth to take charge of, make application to the Massachusetts highway commission, and with the application submit satisfactory plans, profiles and cross-sections of said way, the commission shall indicate on such plans, profiles and cross-sections a location and grade for the tracks of said street railway company. If the commission considers said way suitable for a state highway, and the commission and [the directors of] the street railway company *by vote of its directors* agree as to the proportionate part of the cost of constructing it which shall be paid by the commonwealth and by the street railway company, the commission may pay, out of the appropriations for the construction and repair of state highways, said proportionate part of the damages sustained by a person whose property may be injured by the construction of such state highway, and of the cost of grading the said way to the lines established by the Massachusetts highway commission. A way which is graded under the provisions of this section shall remain a town way or a highway, subject to all laws relative thereto, until said way is taken charge of as a state highway by the commonwealth.

Acts of 1909, Chapter 417, § 4.

1906, 463, Part III, § 70, amended. See 1911, 442, 481, 509.

SECTION 4. Section seventy of Part III of said chapter four hundred and sixty-three is hereby amended by striking out the words "the president or a majority of the directors of", in the second and third lines, — by striking out the words "the directors of", in the fourteenth line, and by inserting after the word "company", in the same line, the words: — by vote of its directors, — so as to read as follows: — *Section 70. [For § 70 as amended, see above.]*

Supervision by state highway commission. 1898, 578, § 24. R. L. 112, § 61.

SECTION 71. If a public way in which a street railway location has been granted shall be thereafter laid out, taken charge of or constructed by or under the authority of the Massachusetts highway commission, the commission shall thereafter, relative to the location and maintenance of a street railway upon such state highway, have the authority conferred by the provisions of sections seven, sixty-four, sixty-five, sixty-six and seventy-nine upon boards of aldermen and selectmen, and shall exercise such authority in the same manner, and subject to the same rights and limitations.

Laying and construction of railways in state highways, etc.

SECTION 72. A state highway shall not be dug up for the construction of a street railway, except upon written permit of the Massachusetts highway commission, and in accordance with

the regulations of the commission; and the work shall be done under the supervision and to the satisfaction of said commission, and the entire expense of replacing the highway in as good condition as before shall be paid by the street railway company.

1893, 476, § 14.
R. L. 47, § 21.
[1 Op. A. G.
317.]

OPERATION.

SECTION 73. No street railway or portion or extension thereof shall be opened for public use until the board of railroad commissioners, after an examination, certifies that all laws relative to its construction have been complied with, and that it appears to be in a safe condition for operation; but nothing herein contained shall be construed as compelling said board to grant such certificate until the entire road included in the location of such railway, portion or extension has been completed.

Opening for use conditional upon certificate of railroad commissioners.
1901, 368.
R. L. 112, § 39.

SECTION 74. The board of aldermen of a city, or the selectmen of a town may, subject to the approval, revision or alteration of the board of railroad commissioners, establish such regulations as to the rate of speed, the manner and extent of use of tracks, and the number and routes of cars which run over such tracks, within such city or town, as the interest and convenience of the public may require; and a street railway company whose servants or agents wilfully or negligently violate any such regulations shall forfeit not more than five hundred dollars for each offence.

Rules as to rate of speed, etc.
1864, 229, § 16.
1871, 381.
§§ 18, 19.
P. S. 113.
§§ 27, 28.
R. L. 112, § 40.
1903, 143.
1905, 376.
11 Allen, 287.
167 Mass. 49.
190 Mass. 531.

USE OF WAYS.

Revised Laws, Chapter 52, §§ 6, 7.

SECTION 6. Cities and towns may make ordinances and by-laws to prevent the pasturing of cattle or other animals, either with or without a keeper; relative to the passage and driving of sheep, swine and neat cattle; prohibiting persons from riding or driving beasts of burden, carriage or draught, at a rate of speed inconsistent with public safety or convenience; regulating the passage of carriages, sleighs, street cars, or other vehicles, or the use of sleds for coasting; regulating and controlling persons who frequent public places playing on hand organs, drums, trumpets or other musical instruments, upon or through any way or bridge, and may affix penalties of not more than twenty dollars for each violation thereof. They may, by ordinance or by-law, regulate the transportation of the offal of slaughtered animals upon or through any way or bridge and affix a penalty of not more than one hundred dollars for each violation thereof.

Use of ways.
1857, 82.
G. S. 45, § 10.
1865, 31, § 1.
1869, 301.
1874, 225.
1875, 136.
1876, 20.
P. S. 53, §§ 10-13, 15, 16.
1892, 390.
14 Gray, 52.
140 Mass. 432.
148 Mass. 380.
162 Mass. 496.
See 1904, 161.
193 Mass. 280.
1912, 372.

SECTION 7. A city, by ordinance, and a town, by by-law, may prohibit persons from riding or propelling, or from causing to be propelled, a vehicle except such as is drawn by a horse or a person, upon a street or way therein, at a rate of speed which it considers to be inconsistent with public safety or convenience, and for a violation thereof may affix a penalty of a fine of not more than one hundred dollars or of imprisonment for not more than ten days, or of both such fine and imprisonment.

Speed of vehicles regulated.
1901, 192, § 1.

SECTION 75. The superintendent of streets of a city, or any officer who exercises like authority therein, and the selectmen

Clearing snow from tracks.
1898, 578, § 12.
R. L. 112, § 41.

of a town, shall establish regulations for the clearance of snow from its tracks by any street railway company operating in said city or town, and for the removal of such snow by said street railway company from the streets or ways in which such tracks are located: *provided*, that no street railway company shall be compelled to remove from the streets or ways in which its tracks are located an amount of snow greater than it has cleared from between its rails and between its tracks and from a space eighteen inches wide on either side of its tracks.

On or before the first day of September in each year, the local authorities hereinbefore named shall transmit to the president or other officer of each street railway company operating its cars in the streets or ways of said city or town, and to the board of railroad commissioners, a copy of the regulations as established by said authorities. Within fourteen days after the receipt by any street railway company of such regulations said street railway company may, by its president or a majority of its board of directors, petition the board of railroad commissioners for such amendment thereto as said president or said board of directors consider reasonable. Said board shall, after notice and a hearing, within sixty days of the receipt of said petition, file with said local authorities and with the president of said street railway company its findings upon said petition, including such amendments to said regulations, if any, as said board considers reasonable, and thereafter such regulations as established by said local authorities and as amended by said board shall be and remain in force until the first day of the September following, and thereafter until other regulations are established as is herein provided.

Voluntary discontinuance of use of tracks.
 1864, 229, § 19.
 1871, 381, § 25.
 P. S. 113, § 25.
 R. L. 112, § 36.
 1906, 339.
 191 Mass. 527.
 199 Mass. 395,
 398.

SECTION 76. If a street railway company voluntarily discontinues the use of any part of its tracks for a period of six months, the streets or highways occupied thereby shall, upon the order of the board of aldermen of a city or the selectmen of a town, forthwith, at the expense of the company, be cleared of said tracks, and be put into as good condition for public travel as they were in immediately before being so occupied. If a street railway company without right or lawful excuse discontinues the use of any track and when requested by the board of aldermen of the city or by the selectmen of the town in which such track is located refuses to operate the same, the mayor of such city, if duly authorized by vote of the city council or the selectmen of such town if duly authorized by vote of the town, may petition the supreme judicial court to compel said company to resume the use of such track and to perform all its corporate duties relating thereto. Such petition shall set forth the facts upon which the petitioner relies and the relief sought, but shall not be defeated for informality, and may be amended at any stage; and said court shall have jurisdiction in equity to determine the cause and enforce its decrees and orders relative

thereto. Upon the filing of any such petition said court shall order due notice to be served upon the street railway company and shall advance the cause to speedy hearing and final decision. In case the track, the use of which has been discontinued, is located in two or more municipalities, any or all of such municipalities acting by the officials above named and authorized as hereinbefore provided, may join in such petition. Nothing herein contained shall be deemed a legislative construction of any existing law or an impairment of any existing right of a street railway company to discontinue the use of tracks.

SECTION 77. The board of aldermen of a city or the selectmen of a town may order a street railway company to discontinue temporarily the use of any tracks within the limits of such city or town, if they determine that the public safety or convenience so requires.

See 1908, 266, 552.

Temporary discontinuance of use of tracks.
1864, 229, § 20.
1871, 381, § 26.
P. S. 113, § 26.
R. L. 112, § 37.

SECTION 78. A city or a town which, for any lawful purpose, takes up, alters or discontinues streets or highways in which the tracks of a street railway company are located, shall not be liable in damages therefor to the street railway company.

P. S. 113, § 31.

R. L. 112, § 43.

135 Mass. 551.

Taking up, alteration or discontinuance of streets or highways.
1864, 229, § 17.
1871, 381, § 20.

SECTION 79. A street railway company shall not be required to keep any portion of the surface material of streets, highways and bridges in repair, but it shall remain subject to all legal obligations imposed in original grants of locations, and may, as incident to its corporate franchise, and without being subject to the payment of any fee or to any other condition precedent, open any street, highway or bridge in which any part of its railway is located, for the purpose of making repairs or renewals of the railway, or of any part thereof, and the superintendent of streets or other officer who exercises like authority, or the board of aldermen or selectmen shall issue the necessary permits therefor in a city or town in which such are required. If, during the original construction or subsequent alteration or extension or the making of any such repairs or renewals of any railway or a portion thereof, said surface material is disturbed, the company which owns or operates such railway shall, at its own cost, except as provided in sections sixty-five and seventy-one, replace to the reasonable satisfaction of the superintendent of streets, or other officer who exercises like authority, said surface material with the same form of construction as that which was disturbed, or, by first obtaining the approval thereof by such officer, with a different material and form of construction, and shall restore said street, highway or bridge to as good condition as existed at the time of such disturbance. A street railway company shall be liable for any loss or injury which may be sustained by any person in the management and use of its tracks and during the construction, alteration, extension, repair or renewal of its railway, or while replacing the surface of any street which may have been disturbed as aforesaid, and

Repair of streets, highways and bridges.
1864, 229, § 18.
1866, 286.
1871, 381, § 21.
1881, 121.
P. S. 113, § 32.
1898, 578, § 11.
R. L. 112, § 44.
104 Mass. 18.
109 Mass. 221, 525.
112 Mass. 57.
116 Mass. 420.
130 Mass. 492.
132 Mass. 178.
149 Mass. 335.
168 Mass. 556.
169 Mass. 508.
173 Mass. 587.
182 Mass. 41, 49.
184 Mass. 294.
188 Mass. 180.
189 Mass. 256.
191 Mass. 308.
192 Mass. 114, 315.
213 Mass. 106.
196 U. S. 539.

which results from the carelessness, neglect or misconduct of its agents or servants who are engaged in the prosecution of such work, if notice of such loss or injury is given to the company and an action therefor is commenced in the manner provided by section twenty of chapter fifty-one of the Revised Laws. The provisions of this section shall not affect the obligations of any street railway company in respect of the construction or maintenance of any bridge or part thereof which any private person or corporation may be liable, in whole or in part, to construct or maintain.

Revised Laws, Chapter 51, § 20.

Notice of injury. Limitation of action. 1877, 234, § 3. P. S. 52, § 19. 1882, 36. 1888, 114. 1894, 422. 128 Mass. 318. 129 Mass. 525. 131 Mass. 441. 132 Mass. 178, 534. 134 Mass. 374, 484, 507. 136 Mass. 136. 145 Mass. 549. 151 Mass. 212. 153 Mass. 514. 164 Mass. 393.

SECTION 20. A person so injured shall, within ten days thereafter, if such defect or want of repair is caused by or consists in part of snow or ice, or both, and in all other cases, within thirty days thereafter, give to the county, city, town or person by law obliged to keep said way, cause-way or bridge in repair, notice of the time, place and cause of the said injury or damage; and if the said county, city, town or person does not pay the amount thereof, he may within two years after the date of said injury or damage recover the same in an action of tort. Such notice shall not be invalid or insufficient solely by reason of any inaccuracy in stating the time, place or cause of the injury, if it is shown that there was no intention to mislead and that the party entitled to notice was not in fact misled thereby.

Time.	136 Mass. 136.	131 Mass. 441.	168 Mass. 251, 556.
132 Mass. 299, 324.	139 Mass. 91.	443, 516, 551.	177 Mass. 373.
Place.	155 Mass. 595.	132 Mass. 187, 324, 441.	178 Mass. 195.
128 Mass. 521.	156 Mass. 145.	135 Mass. 110.	188 Mass. 53.
130 Mass. 115.	158 Mass. 279.	147 Mass. 402.	189 Mass. 254.
131 Mass. 202.	Cause.	136 Mass. 278, 419.	191 Mass. 295.
132 Mass. 187, 324.	135 Mass. 110.	140 Mass. 227, 424.	197 Mass. 178.
135 Mass. 110.	130 Mass. 161.	142 Mass. 486.	1907, 204.
133 Mass. 529.	275, 398, 494.	155 Mass. 344.	See 1908, 305.

Liability of company for defective streets, highways and bridges. 1866, 286. 1871, 381, § 22. P. S. 113, § 33. R. L. 112, § 45. 1904, 110. 112 Mass. 48. 197 Mass. 79.

SECTION 80. If, upon the trial of an action against the commonwealth, a city, town, railroad corporation or bridge corporation, the plaintiff recovers damages for an injury to his person or property which was caused by reason of a defect in a street, highway or bridge which is occupied by the tracks of a street railway company, and the street railway company is liable for such damages under the preceding section, and has had reasonable notice to defend the action, the commonwealth, city, town, railroad corporation or bridge corporation may recover the damages, and all the costs of both plaintiff and defendant in the action from the street railway company.

Guards upon bridges and draws. 1869, 306. 1871, 381, §§ 23, 24. P. S. 113, §§ 34, 35. R. L. 112, § 46.

SECTION 81. Every street railway company shall, in a manner satisfactory to the board of railroad commissioners, erect and maintain upon every bridge, or draw of a bridge, which is crossed by its tracks, guards or railings, to prevent its cars from running off. If, for sixty days after service upon it of an order of the board of railroad commissioners relative to such guards or railings, it neglects to comply therewith, it shall, for each month of such neglect subsequent to said sixty days forfeit two hundred dollars, to the use of the city or town.

SECTION 82. If a street railway crosses at the same level a steam railroad where locomotive engines are in daily use, every motorman of a car upon the street railway shall, when approaching the point of intersection, stop his car within one hundred feet of the crossing. For each violation of the provisions of this section, the motorman shall forfeit ten dollars, and the company which employs him shall forfeit twenty dollars, provided, however, that the board of railroad commissioners may, for such term and under such restrictions as it may from time to time prescribe, modify or suspend the requirements of this section with respect to any such crossing by a street railway of a railroad built for private use under the provisions of section two hundred and fifty-one of Part II of this act, or of a branch, spur or siding of a railroad built or used only for the transportation of freight to the premises of manufacturing or other industrial plants.

Cars to stop at railroad crossings.
1859, 126, § 2.
G. S. 63, § 142.
1864, 229, § 36.
1871, 381,
§§ 47, 48.
P. S. 113,
§§ 41, 42.
R. L. 112, § 62.
Amended by 1911, 290.

Acts of 1911, Chapter 290.

An Act relative to the Operation of the Cars of Street Railway Companies Across the Tracks of Railroad Corporations.

Section eighty-two of Part III of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby amended by adding at the end thereof the words: — *provided, however*, that the board of railroad commissioners may, for such term and under such restrictions as it may from time to time prescribe, modify or suspend the requirements of this section with respect to any such crossing by a street railway of a railroad built for private use under the provisions of section two hundred and fifty-one of Part II of this act, or of a branch, spur or siding of a railroad built or used only for the transportation of freight to the premises of manufacturing or other industrial plants, — so as to read as follows: — *Section 82. [For § 82 as amended, see above.]*

1906, 463,
Part III, § 82,
amended.

Acts of 1910, Chapter 453.

An Act relative to the Liability of Street Railway Companies for the Safety of Passengers.

No street railway company shall by rule or otherwise require passengers whom it permits to ride upon the platform to do so at their own risk, and no such passenger shall be prevented from recovering compensation in damages for any injury by reason of the fact that he is so riding. [*Approved April 27, 1910.*]

Liability of street railway companies.

SECTION 83. The board of aldermen of a city or the selectmen of a town may, subject to the approval of the board of railroad commissioners, establish such regulations, requiring the motorman or conductor to give notice or warning of the approach of street cars, as shall in their opinion best secure the unobstructed use of the tracks and the free passage of the cars.

Notice of approach of cars.
1864, 229, § 22.
1871, 381, § 28.
P. S. 113, § 36.
R. L. 112, § 47.

SECTION 84. Whoever wilfully obstructs a street railway company in the legal use of a railway track, or delays the

Obstruction of tracks.
1864, 229, § 22.

1871, 381, § 29. passing of its cars thereon, or aids or abets in such obstruction
 P. S. 113, § 37. or delay, shall be punished by a fine of not more than five hun-
 1901, 452. dred dollars or by imprisonment for not more than three
 R. L. 112, § 48. months.
 7 Allen, 573.

Penalty.

Whoever commits any of said acts in such manner as to endanger the life or safety of persons conveyed in or upon said cars, or aids or abets therein, shall be punished by imprisonment in the state prison for not more than ten years, or by a fine of not more than one thousand dollars.

Explosives upon tracks.
 1904, 396

SECTION 85. Whoever without right throws into, against or upon, or puts, places or explodes or causes to be exploded in, upon or near a street railway or street railway car, gunpowder or other explosive, or a bombshell, torpedo or other instrument filled or loaded with an explosive, with intent unlawfully to destroy or injure such street railway or street railway car, or any person or property therein or thereon, shall be punished by imprisonment in the state prison for not more than ten years or in jail for not more than five years, or by a fine of not more than five hundred dollars.

Loitering within stations, etc.
 1905, 134.

SECTION 86. Whoever without right loiters or remains within a station or waiting-room of a street railway company, or upon the platform, stairs, grounds or other property owned or controlled by a street railway company, adjacent to such station or waiting-room, after being requested to leave the same by a special or other police officer, shall forfeit not less than two nor more than twenty dollars.

Disorderly conduct in public conveyances.
 1883, 102.
 R. L. 212, § 35.

SECTION 87. Whoever, in or upon a street railway car, is disorderly, or disturbs or annoys travellers in or upon the same by profane, obscene or indecent language, or by indecent behavior, shall be punished by imprisonment for not more than thirty days or by a fine of not more than fifty dollars.

Obstruction of streets or highways by companies.
 1864, 229, § 23.
 1871, 381, § 30.
 P. S. 113, § 38.
 R. L. 112, § 49.

SECTION 88. If a street railway company, its agent or servant, wilfully or negligently obstructs a street, highway or bridge, or hinders the passing of carriages over the same, or wilfully detains the cars of another company which has the lawful right to pass thereon, such company shall be punished by a fine of not more than five hundred dollars; and any such agent or servant shall be punished by a fine of not more than ten dollars or by imprisonment for not more than three months.

Sales by children upon cars.
 1889, 229.
 R. L. 112, § 50.

SECTION 89. If a street railway company, its agents or servant, allows a child under the age of ten years to enter upon or into any of its cars for the purpose of selling newspapers or other articles therein or offering them for sale, it shall forfeit fifty dollars for each offence, which shall be recovered by any person by an action brought within three months after the offence has been committed.

Fenders, wheel guards, brakes and emergency tools.

SECTION 90. A street railway company shall equip its cars, when in use, with such *headlights*, fenders, wheel guards, brakes,

[and] emergency tools *and other safety devices* as may be required by the board of railroad commissioners, and said board may modify its requirements.*

1890, 364.
1891, 366.
1895, 378, § 1.
R. L. 112, § 52.
1903, 134.

Amended by 1911, 345; 1913, 357.

See 1913, 598, below.

Acts of 1911, Chapter 345.

An Act relative to the Use of Headlights on the Cars of Street Railway Companies.

SECTION 1. Section ninety of Part III of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby amended by inserting before the word "fenders", in the second line, the word:— headlights,— so as to read as follows:— *Section 90.* A street railway company shall equip its cars, when in use, with such headlights, fenders, wheel guards, brakes and emergency tools as may be required by the board of railroad commissioners, and said board may modify its requirements.

*1906, 463,
Part III, § 90,
amended.*

SECTION 2. This act shall take effect upon its passage. [*Approved April 27, 1911.*]

Acts of 1913, Chapter 357.

An Act relative to the Use of Safety Devices on the Cars of Street Railway Companies.

SECTION 1. Section ninety of Part III of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six, as amended by chapter three hundred and forty-five of the acts of the year nineteen

*1906, 463,
Part III, § 90,
amended.*

* The regulations for the equipment of street railway cars with fenders and wheel guards established by the Board under the provisions of 1895, 378 [now § 90, Part III, Chap. 463, of Acts of 1906]:—

1. All cars run by a street railway company on a highway, town way or travelled place (excepting cars run by horse power, cars run only as trailing cars, and, until the further order of the Board, cars run wholly within the limits of towns whose population is less than 7,500 each) shall be equipped with fenders and wheel guards in accordance with one of the two following methods: Either (1) with a fender at the front of the car (going in either direction), and also with wheel guards underneath the car; or (2) with a fender at the front of the car of such design as to serve also as a wheel guard.

In the *first* case (1) the fender shall consist of a platform, netting, or other similar device, constructed and arranged so as with reasonable certainty to pick up a person who is run into while standing, but to pass over a person who is lying on the ground, without probable injury to the person in either contingency; and the wheel guards shall be of such construction and arrangement or method of operation as to prevent, so far as practicable, a person who has fallen or been thrown down from being run over by the wheels.

In the *second* case (2) the fender shall be of such construction, arrangement and method of operation as not only to pick up as aforesaid a person who is run into while standing, but also to prevent so far as practicable a person who has fallen or been thrown down from getting under the car and being run over by the wheels. This form of fender shall accordingly include a device by which, in case of emergency, it can be lowered by the motorman, and when lowered held down close to the ground.

2. These regulations shall take effect on the fourteenth day of November, 1895; and may be modified from time to time, in general or in particular, as experience and the public safety may seem to the Board to require.

Under date of September 15, 1910, the Board, under the provisions of chapter 463, Acts of 1906, Part III, § 90, issued the following regulations and requirements for street railway fenders and wheelguards:—

1. All cars operated on surface lines by street railway companies (excepting cars run only as trailing cars) shall be equipped with fenders; and all cars operated on surface lines shall be equipped with wheelguards.

2. In the opinion of the Board the rigid part of all fenders shall be, as near as practicable, twelve inches above the rail; and the height of wheelguards should be, as near as practicable, four inches above the rail.

3. Each street railway company shall submit to the Board, on or before December 1, 1910, a blue-print, sketch or photograph showing the types of such fenders and wheelguards, attached to a car, as it desires to use, together with the height of same above the rails, and accompanied by a petition requesting the approval of the same by the Board.

Under date of June 10, 1913, recommendations of the Board relative to sanding devices and hand brakes on street railway cars were made as follows:—

1. That all cars operated in this commonwealth be equipped with such devices for distributing sand on the rails as may be approved by the Board, and that each device be kept supplied with sand and maintained in good working condition at all times.

2. That all cars operated in this commonwealth be equipped with hand brakes to be maintained in good working condition at all times, and that upon leaving the car houses on the first trip each day the hand brakes be tested a sufficient number of times to insure their efficiency in properly controlling and stopping the car.

hundred and eleven, is hereby further amended by striking out the word "and", in the third line, and by inserting after the word "tools", in the same line, the words: — and other safety devices, — so as to read as follows: — *Section 90.* A street railway company shall equip its cars, when in use, with such headlights, fenders, wheel guards, brakes, emergency tools and other safety devices as may be required by the board of railroad commissioners, and said board may modify its requirements.

SECTION 2. This act shall take effect upon its passage. [*Approved March 26, 1913.*]

Acts of 1913, Chapter 598.

An Act to require Street Railway Companies to equip their Cars with Lifting Jacks and Other Apparatus.

See § 90, above.

SECTION 1. All street railway cars operated in this commonwealth, whether used for the carriage of passengers or for other purposes, shall be equipped with an emergency lifting jack and with such other emergency tools as may be approved by the railroad commissioners.

SECTION 2. Any company, its officers or employees, operating a street railway car in the use of which this act is violated, shall be punished by a fine of not less than fifty nor more than one hundred dollars.

SECTION 3. This act shall take effect on the first day of July in the year nineteen hundred and fourteen. [*Approved May 2, 1913.**]

Heating of cars.
1895, 136.
R. L. 112, § 53.

SECTION 91. The board of railroad commissioners shall require every street railway company to heat its cars, when in use for the transportation of passengers, at such times by such means, and to such extent, as said board shall determine, and the company shall forfeit twenty-five dollars for each trip run by any of its cars not so heated, unless in case of accident to the heating process or apparatus, or other unavoidable accident. The district police shall cause the provisions of this section to be enforced.†

Enclosed platforms.
1897, 452,
§§ 1, 2,
1900, 414,
§§ 1, 3,
R. L. 112,
§§ 56, 58.
See 1911, 120.

SECTION 92. Every street car in use for the transportation of passengers in December, January, February and March, which, while in motion, requires the constant care or service of an employee upon its platforms or upon one of them, shall,

* Under date of December 27, 1911, the following order and recommendations of the Board in relation to the use of lifting jacks and other emergency tools upon street railways in this commonwealth were issued: — *Ordered.* That at least fifty per cent of all box cars and fifty per cent of all open cars operated by each street railway company for the transportation of passengers in Massachusetts shall be equipped with a lifting jack of at least fifteen tons capacity, and the assignment of such cars shall be so made that each line shall have as nearly as practicable a proper distribution thereof.

The Board recommends that the trucks of all double truck street railway cars operated in this state be so attached that both car body and truck may be raised at the same time without necessitating the use of chains, ropes or a large quantity of blocking. This may be successfully accomplished on cars having a king bolt (or centre pin) by inserting in the king bolt a key (or cotter pin) of sufficient strength to raise the trucks.

The Board further recommends that all conductors and motormen receive instructions with reference to the proper and safe use of lifting jacks.

July 1, 1912, is hereby fixed as the time when the foregoing order and recommendations shall become effective.

† The requirements of the Board in respect to the heating of cars by street railway companies, made under the provisions of section 91, part three, chapter 463, Acts of 1906, read as follows:

1. All box cars used by street railway companies for the transportation of passengers between the fifteenth day of October and the fifteenth day of April in each year shall be equipped with suitable apparatus for heating by electricity, unless other than electric heaters are specially authorized by the board.

2. Every street railway company shall, during the period above named, whenever the outside temperature is less than forty degrees above zero (Fahrenheit) maintain, in all box cars in use for transporting passengers, an inside temperature, as nearly as may be, of no less than forty nor more than sixty degrees above zero, except at times when the company is temporarily prevented from so doing by storm, accident or other controlling emergency for which it is not responsible and which is not due to any negligence upon its part.

except as provided in the following section, have said platforms or platform enclosed in such manner as to protect the motorman, conductors or other employees who operate such car from exposure to wind and weather in such manner as the board of railroad commissioners shall approve.

SECTION 93. All decisions heretofore rendered by the board of railroad commissioners under the provisions of chapter four hundred and fifty-two of the acts of the year eighteen hundred and ninety-seven and of chapter four hundred and fourteen of the acts of the year nineteen hundred shall have the same force and effect as they had on and after the first day of December in the year nineteen hundred and two, but they shall be subject to revision by said board.

Decisions of board of railroad commissioners.
1897, 452.
1900, 414.
R. L. 112, § 57.

SECTION 94. A street railway company which fails or neglects to comply with the provisions of either of the two preceding sections shall be punished by a fine of not more than one hundred dollars for each day during which such neglect continues.

Penalty.
1897, 452, § 3.
1900, 414.
§§ 4, 5.
R. L. 112, § 59.

[SECTION 95. A day's work for all conductors and motormen who are employed by or on behalf of a street railway company shall not exceed ten hours, and shall be so arranged by the employer that it may be performed within twelve consecutive hours. No officer or agent of any such company shall require from said employees more than ten hours' work for a day's labor; but on legal holidays, on days when the company is required to provide for extraordinary travel, and, in case of accident or unavoidable delay, extra labor may be performed for extra compensation.]

Day's work of employees.
1893, 386.
1894, 508, § 9.
R. L. 106, § 22.
Repealed by
1912, 533.

Acts of 1912, Chapter 533.

An Act relative to the Hours of Labor of Employees of Street Railway Companies.

SECTION 1. Section ninety-five of Part III of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby repealed and the work of all conductors, motormen and trainmen who are employed by or on behalf of a street railway or elevated railway company shall be arranged as provided in this act.

1906, 463,
Part III, § 95,
repealed.

[SECTION 2. A day's work for all conductors, motormen and trainmen shall be arranged by the employer upon the basis of nine hours' platform work: *provided, however,* that if in any case the schedule cannot be so arranged as to furnish a day's work of approximately nine hours and it is possible to provide one not exceeding nine and one half hours, the schedule may be so arranged, the platform time above the nine hours to be paid for as an addition to the nine hours' work. The day's work of men employed on regular cars shall be arranged to be performed within twelve consecutive hours. The work of any extra man who is regularly employed may, with his consent, be arranged in early and late halves or portions, but there shall be an interval of not less than eight hours between the close of the work of one day for such extra men and the beginning of the work of the next day, within which they shall not be required to perform any work except in cases of emergency. Nothing herein contained shall be held to prohibit spare men from performing, as substitutes in case of emergency, the work of employees unexpectedly absent.

Superseded.
See 1913, 333,
below.

SECTION 3. No officer or agent of any such company shall require from said employees more than nine hours' platform work for a day's labor except as is herein expressly provided. Threat of loss of employment or threat to obstruct or prevent the obtaining of employment by the employees, or threat to refrain from employing any employee in the future shall be considered coercion and "requiring" within the meaning of this section. On legal holidays and on Sundays and in case of unavoidable delay or other emergency, or at any time at the request of the employee, extra labor may be performed for extra compensation. A company which violates the provisions of this act shall forfeit for each offence not less than one hundred nor more than five hundred dollars.]

SECTION 4. This act shall not affect any written contract existing at the date of its passage.

SECTION 5. This act shall take effect on the first day of January, nineteen hundred and thirteen. [Approved April 25, 1912.]

Acts of 1913, Chapter 833.

An Act relative to the Hours of Labor of Employees of Street Railway Companies.

1912, 533,
amended.

SECTION 1. Chapter five hundred and thirty-three of the acts of the year nineteen hundred and twelve is hereby amended by striking out sections two and three and inserting in place thereof the following:—

Section 2. A day's work for all conductors, guards, drivers, motormen, brakemen and gatemen who are employed by or on behalf of a street railway or elevated railway company shall not exceed nine hours, and shall be so arranged by the employer that it shall be performed within eleven consecutive hours. No officer or agent of any such company shall require from said employees more than nine hours' work for a day's labor. Threat of loss of employment or threat to obstruct or prevent the obtaining of employment by the employees, or threat to refrain from employing any employee in the future shall be considered coercion and "requiring", within the meaning of this section. But nothing herein shall prevent an employee of the character mentioned in this act, if he so desires, from working more hours than those prescribed in the act for extra compensation.

SECTION 2. A company which violates any provision of this act shall forfeit for each offence not less than one hundred dollars nor more than five hundred dollars.

SECTION 3. This act shall not affect any written contract existing at the date of its passage.

(This bill, returned by the governor to the house of representatives, the branch in which it originated, with his objections thereto, was passed by the house of representatives June 18, and, in concurrence, by the senate June 20, the objections of the governor notwithstanding, in the manner prescribed by the constitution; and thereby has the "force of a law".)

FARES AND ACCOMMODATIONS.

Reasonable accommodations, etc. 1864, 229, § 26. 1865, 261. 1871, 381, § 33. P. S. 113, § 43. R. L. 112, § 69. 1911, 462.

SECTION 96. Every street railway company shall furnish reasonable accommodations for the conveyance of passengers, and for every wilful neglect to provide such accommodations shall forfeit not less than five nor more than twenty dollars; and may establish the rates of fare for all passengers and property conveyed or transported in its cars, subject, however, to the limitations named in its charter or hereinafter set forth.

SECTION 97. If, in the opinion of the board of railroad commissioners, additional accommodations for the travelling public are required upon any street railway, it may, after due notice to the company and a hearing, make an order requiring such additional accommodations as it determines are just, and may alter, renew or revoke the order. A street railway company which, for more than one week after receiving notice in writing of such order, neglects to comply therewith, shall forfeit to the use of the city or town for which such additional accommodations are ordered, or if they are ordered for more than one city or town, to the use equally of such cities or towns, one hundred dollars for each day thereafter during which such neglect continues.

Additional accommodations.
1891, 216.
R. L. 112, § 70.
199 Mass. 399.
See 1911, 462, below.

Acts of 1911, Chapter 462.

An Act relative to Accommodations to be provided by Street Railway Companies.

The word "accommodations" in section ninety-seven of Part III of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six shall be deemed to include waiting rooms, stations, water closets and other sanitary conveniences. [Approved May 18, 1911.]

SECTION 98. A street railway company may provide cars for special service, and may make special rates therefor; and may make special rates for working men and working women on week days between the hours of five and seven in the morning and five and seven in the evening, and for children attending school. Such company shall not give free tickets or passes to any state, county or municipal official, or to any person in the employ of the commonwealth or of any county, city or town, except policemen, firemen and letter carriers, in uniform; but it may give them to a director of the company or to any person who is connected with it in any executive capacity. A company which violates any of the provisions of this section shall forfeit for each offence not less than one hundred dollars nor more than five hundred dollars.*

Special service cars, etc.
1898, 578, § 18.
R. L. 112, § 71.
199 Mass. 289.
See 1913, 784, § 18.

Passes.

[SECTION 99. The rates of fare charged by a street railway company for the transportation of pupils of the public or private schools between a given point, from or to which it is necessary for them to ride in travelling to or from the schoolhouses in which they attend school and their homes, whether such schoolhouses are located in the city or town in which the pupils reside or in another city or town, shall not exceed one half the regular fare charged by such street railway company

Special rates for pupils in public schools.
1900, 197.
R. L. 112, § 72.
187 Mass. 436.
199 Mass. 289.
[Amended by 1906, 479.]
Repealed,
1908, 530, § 2.
1910, 567.
See 1906, 479.

* The law providing for eight cent commutation checks in the city of Boston was section 47 of chapter 113 of the public statutes. In the report to the general court of the commissioners for consolidating the public statutes, made in 1901, as a note to chapter 112 (now mostly included in part III, chapter 463, Acts of 1906) appears this statement:

"Sections 46 and 47 of pub. stats. c. 113, have been omitted as being special. If it is thought necessary to preserve them, they may be excepted from the repeal of the public statutes or re-enacted as special laws."

In the table of dispositions of the revised laws, the statement is made that sections 46 and 47, of public statutes, chapter 113, have been omitted as special, and chapter 227 of the revised laws which treats of the express repeal of certain acts and resolves, repeals the entire body of the public statutes.

for the transportation of other passengers between said points, and tickets for the transportation of pupils as aforesaid, good during the days when said schools are in session, shall be sold by said company in lots of ten each. A railway company which violates the provisions of this section shall forfeit twenty-five dollars for each offence.]

Acts of 1900, Chapter 197, § 4.

Boston Elevated Railway Company, exemption.

SECTION 4. This act shall take effect upon its passage, but for the term of twenty-five years from the tenth day of June in the year eighteen hundred and ninety-seven it shall not apply to the Boston Elevated Railway Company or to any railways now owned, leased or operated by it.

Acts of 1908, Chapter 530.

An Act relative to the Transportation, by Street and Elevated Railway Companies, of Pupils of the Public Day and Public Evening Schools and Private Schools.

Transportation of pupils.

Amended.
1910, 567.
See 1912, 566,
§ 6.

SECTION 1. The rates of fare charged by street or elevated railway companies for the transportation of pupils of the public day schools or public evening schools or *industrial day or evening schools organized under the provisions of chapter five hundred and five of the acts of the year nineteen hundred and six and acts in amendment thereof*, or private schools between a given point, from or to which it is necessary for them to ride in travelling to or from the schoolhouses in which they attend school and their homes, whether such schoolhouses are located in the city or town in which the pupils reside or in another city or town, shall not exceed one half the regular fare charged by such street or elevated railway company for the transportation of other passengers between said points, and tickets for the transportation of pupils as aforesaid, good during the days or evenings on which said schools are in session, shall be sold by said companies in lots of ten each. A railway company which violates the provisions of this section shall forfeit twenty-five dollars for each offence.

1906, 463,
Part III, § 99,
and 1906, 479,
repealed.

SECTION 2. Section ninety-nine of Part III of chapter four hundred and sixty-three, and chapter four hundred and seventy-nine, of the acts of the year nineteen hundred and six are hereby repealed.

SECTION 3. This act shall take effect upon its passage. [*Approved May 19, 1908.*]

Acts of 1910, Chapter 567.

An Act relative to the Transportation by Street and Elevated Railway Companies of Pupils of Industrial Schools.

1908, 530,
amended.
See 1912,
566, § 6.

Transportation of pupils of certain schools.

Section one of chapter five hundred and thirty of the acts of the year nineteen hundred and eight is hereby amended by inserting after the word "or", where it last occurs in the third line, the words: — industrial day or evening schools organized under the provisions of chapter five hundred and five of the acts of the year nineteen hundred and six and acts in amendment thereof or, — so as to read as follows: — *Section 1.* The rates of fare charged by street or elevated railway companies for the transportation of pupils of the public day schools or public evening schools or industrial day or evening schools organized under the provisions of chapter five hundred and five of the acts of the year nineteen hundred and six and acts in amendment thereof, or private schools between a given point, from or to which it is necessary for them to ride in travelling to or from the schoolhouses in which they attend school and their homes,

whether such schoolhouses are located in the city or town in which the pupils reside or in another city or town, shall not exceed one half the regular fare charged by such street or elevated railway company for the transportation of other passengers between said points, and tickets for the transportation of pupils as aforesaid, good during the days or evenings on which said schools are in session, shall be sold by said companies in lots of ten each. A railway company which violates the provisions of this section shall forfeit twenty-five dollars for each offence. [Approved May 26, 1910.

Acts of 1911, Chapter 537.

An Act to provide that Towns whose Valuation is Less than One Million Dollars shall be reimbursed for Certain High School Expenses.

Section three of chapter forty-two of the Revised Laws, as amended by chapter four hundred and thirty-three of the acts of the year nineteen hundred and two, is hereby further amended by striking out the words "seven hundred and fifty thousand", in the twenty-second line, and also in the twenty-fifth line, and inserting in place thereof, in each case, the words:— one million,— so as to read as follows:— *Section 3.* A town of less than five hundred families or householders in which a public high school or a public school of corresponding grade is not maintained shall pay for the tuition of any child who resides in said town and who, with the previous approval of the school committee of his town, attends the high school of another town or city. If such town neglects or refuses to pay for such tuition, it shall be liable therefor to the parent or guardian of a child who has been furnished with such tuition if the parent or guardian has paid for the same, and otherwise to the city or town furnishing the same, in an action of contract. If the school committee of a town in which a public high school or public school of corresponding grade is not maintained refuses, upon the completion by a pupil resident therein of the course of study provided by it, to approve his attendance in the high school of some other city or town which he, in the opinion of the superintendent of schools of the town in which he is resident is qualified to enter, the town shall be liable in an action of contract for his tuition. A town whose valuation is less than one million dollars shall be entitled to receive from the treasury of the commonwealth all necessary amounts, and a town whose valuation exceeds one million dollars, but whose number of families is less than five hundred, shall be entitled to receive from the treasury of the commonwealth half of all necessary amounts which have actually been expended for high school tuition under the provisions of this section: *provided*, that such expenditure shall be certified under oath to the board of education by its school committee within thirty days after the date of such expenditure; but, if a town of less than five hundred families maintains a high school of its own of the character described in section two of this chapter and employs at least two teachers therein, it shall be entitled to receive annually from the treasury of the commonwealth toward the support of such high school the sum of three hundred dollars. No town the valuation of which averages a larger sum for each pupil in the average membership of its public schools than the corresponding average for the commonwealth shall receive money from the commonwealth under the provisions of this section; and no expenditure shall be made by the commonwealth on account of high school instruction under the provisions of this section unless the high school in which such instruction is furnished has been approved by the board of education. [Approved June 9, 1911.

R. L. 42, § 3,
1902, 433,
amended.

Tuition of
children in
towns having
no high
school, etc.

Proviso.

Amended.
1913, 396, § 1,
below.

Acts of 1913, Chapter 396.

An Act providing for the Payment by Towns for the Transportation of Pupils to Outside High Schools.

R. L. 42, § 3.
1902, 433, and
1911, 537,
amended.

SECTION 1. Section three of chapter forty-two of the Revised Laws, as amended by chapter four hundred and thirty-three of the acts of the year nineteen hundred and two, and by chapter five hundred and thirty-seven of the acts of the year nineteen hundred and eleven, is further amended by adding at the end thereof the following paragraph: — A town of less than five hundred families or householders, in which a public high school or public school of corresponding grade is not maintained, shall, through its school committee, when necessary, provide for the transportation of any child who resides in said town and who, with the previous approval of the school committee of the town, attends the high school of any other town or city, and shall pay for the expense of such transportation a sum not exceeding one dollar and fifty cents per week during the time of actual attendance of such child in the high school. If any town fails to provide such transportation, it shall be liable in an action of contract, to the parent or guardian of a child who has been furnished with such transportation for such amounts, not exceeding one dollar and fifty cents per week, as the parent or guardian has paid for the same. A town which has expended for the support of its public schools for the preceding year from the proceeds of local taxation an amount not less than four and less than five dollars per thousand dollars of valuation shall receive from the treasury of the commonwealth one half of the amount actually expended for transportation under the provisions of this act; and a town which has expended from the proceeds of local taxation for the support of its public schools for the preceding year an amount equal to at least five dollars per thousand of valuation shall receive from the treasury of the commonwealth the whole transportation under the provisions of this act.

SECTION 2. This act shall take effect upon the first day of July in the year nineteen hundred and thirteen. [*Approved March 28, 1913.*]

Revised Laws, Chapter 25, § 15.

Appropriations by towns.
1785, 75, § 7.
R. S. 15,
§§ 12, 16;
25, § 8.
G. S. 18, § 10.
P. S. 27,
§§ 10, 12.
1897, 132.
1869, 132.
1894, 436, § 4.

SECTION 15. It may at legal meetings appropriate money for the following purposes: . . . "For conveying pupils to and from the public schools, or, if it maintains no high school or public school of corresponding grade but affords high school instruction by sending pupils to other towns, for the necessary transportation expenses of such pupils, the same to be expended by the school committee in its discretion."

1898, 496, § 3.	193 Mass. 221.	1903, 116.	1907, 311.
183 Mass. 74.	1902, 109.	1904, 152.	1908, 290, 392.

Acts of 1913, Chapter 340.

An Act to change the Definition of the Term "Support of the Public Schools."

R. L. 42, § 6,
amended.

Support of
public schools.

SECTION 1. Section six of chapter forty-one of the Revised Laws is hereby amended by inserting after the word "incidentals", in the thirteenth line, the words: — but excluding alterations of school buildings other than repairs and construction of schoolhouses, — so as to read as follows: — *Section 6.* No such apportionment and distribution shall be made to a town which has not maintained a school as required by section one of chapter forty-two; or which, if containing the number of families or householders required by section two of said chapter, has not maintained,

for at least thirty-six weeks during the year, exclusive of vacations, a high school such as is mentioned therein; or which has not made the returns required by sections five and six of chapter forty-three, and complied with the laws relative to truancy; or which has not raised by taxation for the support of public schools which are authorized or required by law, including the wages of teachers, the transportation of school children, fuel, the care of fires, school rooms and school premises, supervision, text books and supplies, and school sundries or incidentals, but excluding alterations of school buildings other than repairs and construction of schoolhouses during the school year embraced the last annual returns, an amount not less than three dollars for each person between the ages of five and fifteen years resident in such town on the first day of September of said school year.

SECTION 2. This act shall take effect upon its passage. [Approved March 25, 1913.]

Revised Laws, Chapter 44, § 4 (as amended).

SECTION 4. If a child whose parent or guardian has a legal residence within the commonwealth resides in a city or town other than that of the legal residence of his parent or guardian [for the sole purpose of there attending school, his parent or guardian shall be liable to said city or town for his tuition while attending school in said city or town to] and in the opinion of the school committee of the said city or town such residence is for the purpose of there attending school in preference to the place of the legal residence of his parent or guardian, the said city or town may recover from the parent or guardian for the tuition of said child, while there attending school, subject to appeal to the probate court, an amount equal to the average expense of such school for each pupil during the preceding year, for a period equal to the time during which the child so attends, unless the city or town in which the parent or guardian resides is required by section three of chapter forty-two to pay for said tuition. A child whose parent or guardian has no legal residence in the commonwealth may be permitted, in the discretion of the school committee in charge, to attend the schools of any city or town on payment as tuition of an amount not less than the average cost of education per pupil in the school which the said child attends. For the tuition in the public schools in any city or town of a child between the ages of five and fifteen years who shall be placed elsewhere than in his own home by the state board of charity, or by the trustees of the Lyman and industrial schools, or kept under the control of either of said boards in said city or town, the commonwealth shall pay to said city or town, and for such tuition of any such child so placed by the trustees for children of the city of Boston, or so kept under the control of said trustees, the city of Boston from its appropriation for school purposes, shall pay to said city or town, fifty cents for each week of five days, or major part thereof, of attendance of every such child in the public schools. For the transportation to and from a public school of any child whose tuition is payable by the commonwealth or by the city of Boston under the provisions of this section, the commonwealth or the city of Boston, as the case may be, shall pay to the city or town furnishing such transportation, for each week of five days or major part thereof, an amount equal to the average amount for each child paid by said city or town per week for the transportation of children to and from school over the route by which such child is conveyed. Settlements of the accounts of the several cities and towns with the commonwealth and with the city of Boston shall be made annually on the first day of April, and the amounts found due shall be paid within three months thereafter. The money received

Attendance at schools in places other than residence of parents or guardians regulated. 1857, 132. G. S. 41, § 7. 1876, 186, § 2. P. S. 47, § 8. 1894, 498, § 8. 1896, 382. 1898, 496, § 8. 103 Mass. 104. 164 Mass. 430. Amended by 1905, 375. 1911, 263, § 2.

by said cities and towns under the provisions of this section shall be applied to the support of schools. For the tuition in the public schools in any town of less than ten thousand inhabitants of any child between the ages of five and fifteen years not theretofore resident in such town, who is an inmate of an institution containing more than six inmates, said town may recover from said institution the extra school expense incurred, as may be determined jointly by the school committee of said town and the trustees or managers of said institution, or, in case of disagreement between said school committee and said trustees or managers, as may be decreed by the probate court; but no demand shall be made upon said trustees or managers without a vote of the town instructing the school committee to that effect.

Revised Laws, Chapter 43, § 4.

School committee to certify number of children, also amount raised for support of schools. 1846, 223, § 2. 1849, 117, § 1. 1855, 23. G. S. 40, § 4. 1865, 142, § 2. 1874, 303, § 2. P. S. 46, § 5. 1896, 179. 1898, 496, § 17. 1900, 175. Amended. 1912, 368, § 3.

SECTION 4. The chairman and the secretary of each school committee shall annually on or before the thirtieth day of April transmit to the secretary of the board of education a certificate filled out, signed and sworn to by them as follows: . . . "III. That said town (or city) raised by taxation and expended during the fiscal year last preceding the date of this certificate the sum of _____ dollars for the support of the public schools, including the wages of teachers, the transportation of school children, fuel, the care of fires, school rooms and school premises, supervision, text books and supplies, and school sundries or incidentals, but excluding repairs, alterations and construction of school houses and contributions for the support of public schools which may be received from the commonwealth or from other sources than local taxation."

Acts of 1912, Chapter 368, § 3.

R. L. 43, § 4, amended.

SECTION 3. Section four of said chapter forty-three is hereby amended by striking out the said section, and inserting in place thereof the following:—*Section 4.* The chairman of each school committee shall annually on or before the thirty-first day of July transmit to the commissioner of education a certificate filled out, signed and sworn to by him, containing the following statements:— . . .

Third. The amount of money raised by taxation by the town (or city), and expended during the school year last preceding the date of the certificate for the support of the public schools, including the wages of teachers, the transportation of school children, fuel, the care of fires, schoolrooms and school premises, repairs, supervision, text-books and supplies, and school sundries or incidentals, but excluding alterations of school buildings, other than repairs, and construction of schoolhouses and contributions for the support of public schools which may be received from the commonwealth or from other sources than local taxation.

Regulation of fares. 1864, 229, § 26. 1871, 381, § 34. P. S. 113, § 44.

SECTION 100. All provisions of law relative to changes and regulation of fares upon railroads shall apply to changes and regulation of fares upon street railways. 1898, 578, § 23. 1901, 180.

R. L. 112, § 73. 185 Mass. 183. [See Part I, §§ 8, 10.] 190 Mass. 288.

Withdrawal of free checks and free transfers. 1894, 383. R. L. 112, § 74.

SECTION 101. A street railway company shall not withdraw or discontinue the use of any free checks or free transfers from one car or line of cars to another without the approval of the board of railroad commissioners; but it may regulate the use thereof to conform to rates of fare established under authority of section ninety-six.

SECTION 102. Every street railway company shall cause to be printed on the transfer tickets issued by it to passengers the conditions under which such tickets may be used. Whoever uses a transfer ticket in violation of any such condition, or whoever uses or attempts to use a transfer ticket not issued to him, or whoever for value disposes of or attempts to dispose of a transfer ticket issued to him to any other person, or whoever for value delivers or attempts to deliver a transfer ticket not issued to him to any person, shall be punished by a fine not exceeding fifty dollars or by imprisonment for a term not exceeding thirty days.

Penalty for misuse of transfer tickets. 1904, 267.

INCREASE OF CAPITAL STOCK AND ISSUE OF BONDS.

SECTION 103. A street railway company, for the purpose of building an extension, or of acquiring land for pleasure resorts, or of acquiring or building power houses or car houses or park buildings, or of acquiring or equipping additional rolling stock, or of changing its motive power, or of furnishing electricity to a town for light, or of abolishing grade crossings, or of paying betterment assessments for widening or otherwise altering streets, or of complying with any requirements lawfully imposed, or of making permanent investments or improvements, or of acquiring any additional real or personal property necessary or convenient for its corporate objects, or of refunding its funded debt, or for the payment of money borrowed or indebtedness incurred for any of the foregoing purposes, or for other similarly necessary and lawful purposes, may, in accordance with the provisions of sections one hundred and seven, one hundred and eight, one hundred and eleven and one hundred and twelve of Part III, and of sections forty-eight to fifty-six, inclusive, of Part II, increase its capital stock or issue bonds, secured by mortgage or otherwise, to such an amount, beyond the amounts fixed and limited by its agreement of association or its charter, or by any special law, as the board of railroad commissioners shall determine will realize the amount which has been properly expended or will be properly required, and as said board shall approve for such of the purposes aforesaid as are set out in its petition to said board. *Said board in authorizing the issue of any bonds under this section may prescribe the minimum price at which such bonds shall be sold, and may modify such price from time to time, as the board may deem proper. Whenever said board authorizes or has approved the issue or sale of bonds of a face value in excess of the amount determined by it to have been properly expended or to be properly required, it may, in its order of approval, or at any time thereafter, require the company issuing such bonds to establish a sinking fund, estimated to realize at the maturity of said bonds a sum equal to the difference between the amount or amounts for which such bonds were authorized or approved, and the face value of the bonds so authorized or approved therefor, and may desig-*

Increase of capital stock and issue of bonds for certain purposes. R. L. 112, §§ 20, 21, 23, 76. 1902, 370. Amended by 1910, 536. See 1908, 636; 1909, 369, 485.

[For §§ 48-56 of Part II, see pp. 60-65.]

nate some Massachusetts trust company as trustee and custodian of such fund, and may from time to time change such trustee. The provisions of any agreement relative to said sinking fund, made between the street railway company and the trust company selected as such trustee, shall be submitted to said board and shall not be valid until approved by it.

Acts of 1910, Chapter 536.

An Act to define and extend the Authority of the Board of Railroad Commissioners to supervise the Issue of Bonds by Street Railway Companies.

1906, 463,
Part III, § 103,
amended.

Authority of
railroad com-
missioners to
supervise the
issue of bonds
by street rail-
way com-
panies ex-
tended, etc.

SECTION 1. Section one hundred and three of Part III of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby amended by adding at the end thereof the following:— Said board, in authorizing the issue of any bonds under this section may prescribe the minimum price at which such bonds shall be sold, and may modify such price from time to time, as the board may deem proper. Whenever said board authorizes or has approved the issue or sale of bonds of a face value in excess of the amount determined by it to have been properly expended or to be properly required, it may, in its order of approval, or at any time thereafter, require the company issuing such bonds to establish a sinking fund, estimated to realize at the maturity of said bonds a sum equal to the difference between the amount or amounts for which such bonds were authorized or approved, and the face value of the bonds so authorized or approved therefor, and may designate some Massachusetts trust company as trustee and custodian of such fund, and may from time to time change such trustee. The provisions of any agreement relative to said sinking fund, made between the street railway company and the trust company selected as such trustee, shall be submitted to said board and shall not be valid until approved by it.

SECTION 2. This act shall take effect upon its passage. [*Approved May 18, 1910.*]

Acts of 1909, Chapter 485.

An Act to authorize Street Railway Companies to issue Securities for supplying Working Capital.

Securities
for working
capital.

SECTION 1. In addition to the purposes for which a street railway company may increase its capital stock or issue bonds, as provided in section one hundred and three of Part III of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six, a street railway company for the purpose of supplying itself with working capital may, in accordance with the provisions of sections one hundred and seven, one hundred and eight, one hundred and ten, one hundred and eleven and one hundred and twelve of Part III of said chapter, or of chapter six hundred and thirty-six of the acts of the year nineteen hundred and eight, as amended by chapter three hundred and sixty-nine of the acts of the year nineteen hundred and nine, in the case of companies to which said last mentioned chapter is applicable, and of sections forty-eight to fifty-six, inclusive, of Part II of said chapter four hundred and sixty-three, increase its capital stock to an amount not exceeding five per cent of the par value of its capital stock then outstanding, or may issue bonds, secured by mortgage or otherwise, to an amount, beyond the amounts fixed and limited by its agreement of association, or by the provisions of any general or special law, and not more than the board of railroad commissioners shall determine will be properly required for such

purpose, and as said board shall approve as being consistent with the interest of the public and of the stockholders of such company and as not unreasonably reducing the security of any bond previously issued.

SECTION 2. This act shall take effect upon its passage. [*Approved June 11, 1909.*]

REDUCTION OF CAPITAL STOCK.

SECTION 104. Upon the petition of a street railway company for authority to reduce its capital stock, presented in accordance with a vote of the stockholders at a meeting called for the purpose, the board of railroad commissioners may, after a hearing and such examination of the financial condition of the company as it considers necessary, authorize such reduction to be made, if it appears to be consistent with the public interests and with the limitations imposed by general or special laws. A certificate of the amount of the reduction and of any terms and conditions imposed shall be forthwith filed by said board in the office of the secretary of the commonwealth. When such reduction is made, no money or other property shall be paid or transferred to the stockholders unless specially authorized by said board, and by a vote of the directors of the company taken by yeas and nays at a meeting called for the purpose. The directors who vote therefor shall be jointly and severally liable for the debts or contracts of the company which exist at the time when the capital stock is reduced, to the extent of the money or property paid or transferred to the stockholders.

Reduction of capital stock.
1890, 326.
R. L. 112, § 22.
See 1908, 636;
1909, 369, 485.

STOCK AND SCRIP DIVIDENDS.

SECTION 105. A street railway company shall not declare any stock or scrip dividend or divide the proceeds of the sale of stock or scrip among its stockholders.

P. S. 105, § 18; 112, § 61.

1894, 350, § 1.

1874, 372, § 177.

R. L. 109, § 20.

Stock and scrip dividends.
1868, 310, § 1.
1871, 389.

SECTION 106. A certificate of stock or scrip issued in violation of the provisions of the preceding section shall be void; and each director of the company issuing it shall be liable to a penalty of one thousand dollars, to be recovered by indictment in the county in which he resides, or, if he resides in no county in this commonwealth, in the county in which he is commorant, or the offence was committed; but if any such director proves that, before such issue, he filed his dissent in writing thereto with the clerk, or was absent, and at no time voted therefor, he shall not be so liable.

Liability of directors.
1868, 310, § 2.
P. S. 105, § 19;
112, § 61.
1894, 350, § 2.
R. L. 109, § 21.
See 1908, 636;
1909, 369, 485.

ISSUE OF CAPITAL STOCK, BONDS, COUPON NOTES AND OTHER EVIDENCES OF INDEBTEDNESS.

SECTION 107. A street railway company shall issue only such amounts of stock and bonds, coupon notes and other evidences of indebtedness payable at periods of more than twelve months after the date thereof, as the board of railroad commissioners may from time to time determine to be reasonably necessary

Issue of capital stock, bonds, coupon notes and other evidences of indebtedness.
1875, 161.
P. S. 110, § 7.

1894, 450, § 1;
452, § 1; 462.
§ 1.
1897, 337, § 1.
R. L. 109, § 24.
[1 Op. A. G.
659.]
See 1908, 636;
1909, 369, 485.

for the purpose for which such issue of stock or bonds has been authorized. Said board shall render a decision upon an application for such issue within thirty days after the final hearing thereon. Such decision shall be in writing, shall assign the reasons therefor, shall, if authorizing such issue, specify the respective amounts of stock or bonds, or of coupon notes or other evidences of indebtedness as aforesaid, which are authorized to be issued for the respective purposes to which the proceeds thereof are to be applied, and shall, within seven days after it has been rendered, be filed in the office of said board. A certificate of the decision of said board shall, within three days after such decision has been rendered and before the stock or bonds or coupon notes or other evidences of indebtedness as aforesaid are issued, be filed in the office of the secretary of the commonwealth, and a duplicate thereof delivered to the company. Such company shall not apply the proceeds of such stock or bonds or coupon notes or other evidences of indebtedness as aforesaid to any purpose not specified in such certificate.

Acts of 1913, Chapter 764.

An Act relative to the Creation and Issue of Preferred Stock by Street Railway Companies.

Preferred stock may be issued by street railway companies upon approval of railroad commissioners.

SECTION 1. A street railway company organized under the laws of this commonwealth may, by vote of two thirds in interest of its common stockholders at a meeting duly called for the purpose, with the approval of the board of railroad commissioners, and subject to the provisions of section one hundred and seven of Part III of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six, and section three of chapter six hundred and thirty-six of the acts of the year nineteen hundred and eight, issue, and from time to time increase, preferred stock of one or more classes, for any lawful purposes for which street railway companies are now or may hereafter be authorized to issue or increase their capital stock. Each class of preferred stock shall be entitled to the preferences and rights and shall be subject to the restrictions and limitations fixed by such vote as approved by said board.

Increase of preferred stock.

Preferences and rights, etc., fixed by vote.

Common stock may be changed to preferred, etc.

SECTION 2. Any such street railway company may, upon such terms and in such manner as shall be determined by vote of two thirds in amount of its outstanding common capital stock and as shall be approved by the board of railroad commissioners, issue in lieu of outstanding common shares preferred shares to such number, of such par value and with such preferences, rights, restrictions and limitations and entitled to such rate of preferred dividend as shall so be determined and approved: *provided, however*, that the aggregate par value of such preferred stock shall not exceed the aggregate par value of the common stock in exchange for which it is issued.

Proviso.

Classes of preferred stock to be designated by name, etc.

SECTION 3. Each class of preferred stock issued under authority of this act shall be designated by a name approved by the said board to distinguish it from all other classes of stock of the company. A certified copy of the vote creating, and of the order of the said board approving, the creation of any class of preferred stock shall be filed in the office of the said board and in the office of the commissioner of corporations. Every certificate of stock issued by a street railway company after the approval by the said board of the creation by it of preferred stock shall

Filing of vote and order of board, etc.

contain a reference to all votes creating preferred stock and a brief description of the respective preferences, rights and restrictions of each class of such stock.

SECTION 4. Any preferred stock issued under authority of this act shall have the same voting power as the common stock, except that, in any case, there may be such limitations of the voting power of said preferred stock as said board approves and finds to be consistent with the adequate protection of the public interests. The aggregate amount at par of preferred stock of all classes issued by a street railway company shall at no time exceed twice the amount at par value of its outstanding common stock, and no class of preferred stock shall be created which is not, in a manner approved by the board of railroad commissioners, made subordinate in respect to dividends or to participation in the proceeds of liquidation to the preferences of every previously created class of preferred stock. Upon any issue of preferred stock the new shares shall, unless the common stockholders shall, with the approval of the board of railroad commissioners, otherwise provide, first be offered to the common stockholders in the manner prescribed in said chapter six hundred and thirty-six of the acts of the year nineteen hundred and eight and acts in amendment thereof, and any shares of the preferred stock which shall not have been duly subscribed and paid for by the common stockholders or their assigns shall be offered in the same manner to the existing holders of preferred stock of the same class; and any of such preferred shares then remaining untaken, and all of the preferred shares if the common stockholders so determine and the said board approves, may be sold in the manner and subject to the provisions of section two of said chapter six hundred and thirty-six. In case of any increase in the common stock of the company, holders of preferred stock shall be entitled to have offered to them shares of the new stock in the manner provided in said chapter six hundred and thirty-six, and acts in amendment thereof, whenever the vote creating such preferred stock as approved by the said board shall so provide.

Voting powers of stock.

Amount of preferred stock regulated.

Preferred shares, how issued.

Remaining preferred shares to be sold.

Increase of preferred stock to be offered present holders whenever board approves.

SECTION 5. Chapter four hundred and forty-one of the acts of the year nineteen hundred and two, so far as it applies to street railway companies, is hereby repealed. [*Approved June 12, 1913.*]

Repeal.

SECTION 108. A street railway company, unless expressly authorized by its charter or by special law, shall not issue bonds, coupon notes or other evidences of indebtedness payable at periods of more than twelve months after the date thereof to an amount which, including the amount of all such securities previously issued and outstanding, exceeds in the whole the amount of its capital stock at the time actually paid in; but this limitation shall not apply to the issue of bonds for the purpose of paying and refunding at maturity bonds lawfully issued prior to the second day of June in the year eighteen hundred and ninety-seven; nor shall it apply to such of the bonds issued or to be issued under a mortgage as are deposited to retire at or before maturity bonds or other evidences of indebtedness previously issued and outstanding at the date of such mortgage, and as do not exceed the par value of the funded or other debt so to be retired; and such company shall not issue the securities specified in this section unless authorized by a vote of its stockholders at a meeting called for the purpose.

Limit of issue of bonds, coupon notes and other evidences of indebtedness.
1889, 316, § 2.
1897, 337, § 2.
R. L. 109, § 25.
See 1908, 620, § 1; 1909, 485.

Enforcement.
1894, 450, § 3;
452, § 3; 462,
§ 3.
1896, 473.
R. L. 109, § 27.

Penalties.
1894, 450, § 2;
452, § 2; 462,
§ 2.
R. L. 109, § 28.
See 1908, 636;
1909, 369, 485.

New shares to
be offered to
stockholders
upon increase
of capital
stock.
1870, 179.
1871, 392, § 1.
1873, 39, § 1;
305.
1878, 84, § 1.
1879, 90, § 1.
P. S. 106, § 39;
112, § 58; 113,
§ 16.
1893, 315, § 1.
1894, 472, § 1.
R. L. 109, § 30.
See 1908, 636;
1909, 369, 485.

Stock sold at
auction.
1870, 179.
1871, 392, § 2.
1873, 39, § 1;
305; 333.
1874, 372, § 46.
1878, 84, § 2.
1879, 90.
P. S. 106, § 40;
112, § 59; 113,
§ 16.

SECTION 109. The supreme judicial court or the superior court shall have jurisdiction in equity, upon the application of the board of railroad commissioners, of the attorney-general, or any stockholder or of any interested party, to enforce the provisions of the two preceding sections and all lawful orders and decisions, conditions or requirements of said board made in pursuance thereof.

SECTION 110. A director, treasurer or other officer or agent of a street railway company who knowingly votes to authorize the issue of, or knowingly signs, certifies or issues, stock or bonds contrary to the provisions of the three preceding sections, or who knowingly votes to authorize the application, or knowingly applies the proceeds, of such stock or bonds contrary to the provisions of said sections, or who knowingly votes to assume or incur, or knowingly assumes or incurs in the name or behalf of such company, any debt or liability except for the legitimate purposes of the company shall be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment.

SECTION 111. If a company which owns or operates a street railway increases its capital stock, such new shares as are necessary to produce the amount of increased capital stock which has been authorized shall, except as provided in the following section, be offered proportionately to its stockholders at such price not less than the market value thereof at the time of increase, as may be determined by the board of railroad commissioners, taking into account previous sales of stock of the company and other pertinent conditions, which determination shall be in writing and with the date thereof shall be certified to and recorded in the books of the company. The directors, upon the approval of such increase as provided in section one hundred and seven, and the determination of the market value as hereinbefore provided, shall cause written notice of such increase to be given to each stockholder of record upon the books of the company at the close of business on the date of such determination by said board, stating the amount of such increase, the number of shares or fractions of shares to which he, according to the proportionate number of his shares at the date of such determination, is entitled, the price at which he is entitled to take them, and fixing a time, not less than fifteen days after the date of such determination by said board, within which he may subscribe for such additional stock. Each stockholder may, within the time limited, subscribe for his portion of such stock, which shall be paid for in cash before the issue of a certificate therefor.

SECTION 112. If the increase in the capital stock which is subject to the provisions of the preceding section does not exceed four per cent of the existing capital stock of the company, the directors, without first offering the same to the stockholders, may sell them by auction to the highest bidder at not less than the par value thereof to be actually paid in cash. They may

also so sell at public auction any shares, which, after the expiration of the time limited in the notice required by the preceding section, remain unsubscribed for by the stockholders entitled to take them. Such shares shall be offered for sale in the city of Boston, or in such other city or town as may be prescribed by the board of railroad commissioners; and notice of the time and place of such sale shall be published at least five times during the ten days immediately preceding the sale in each of at least three of such daily newspapers as may be prescribed by said board. No shares shall be sold or issued under this or the preceding section for a less amount to be actually paid in cash than the par value thereof.

1893, 315, § 2.
1894, 472.
§§ 1, 2.
R. L. 109, § 31.
*See 1908, 636;
1909, 369, 485.*

RAILROAD CROSSINGS.

SECTION 113. For the purpose of avoiding or abolishing a crossing of a railroad by the tracks of a street railway company at grade, the company may purchase or otherwise take land necessary therefor, not exceeding fifty feet in width, outside the limits of a public way; but no land shall be so taken which cannot lawfully be taken for the laying out of a railroad, nor shall it be so taken until a plan on an appropriate scale, showing by metes and bounds the land, and the names of the owners thereof, has, after notice to such owners, and after such public notice and hearing as is required by section seven, been approved in writing by the board of aldermen of the city or the selectmen of the town in which such land is situated; nor shall the land of a railroad corporation or of another street railway company be so taken without its consent, except with the approval of the board of railroad commissioners, after notice and a hearing.

Abolition of
railroad cross-
ings.
1898, 404, § 1.
R. L. 112, § 65.

SECTION 114. A deed or description and a plan of the land so purchased or taken shall be filed in the registry of deeds for the county or district in which the land is situated; and the provisions of law relative to the assessment, payment or recovery of damages for land and other property taken for railroad purposes shall apply to land and property taken under the provisions of the preceding section.

Description
of land.
1898, 404, § 2.
R. L. 112, § 66.

SECTION 115. A street railway company, which has acquired land for such purpose, may construct its railway over or under a railroad, in the manner agreed upon by the companies, or, if they do not agree, in the manner prescribed by the board of railroad commissioners; but no overhead structure shall be built at a height of less than eighteen feet above the railroad track without the consent in writing of said board.

Construction
of tracks out-
side public
ways.
1898, 404, § 3.
R. L. 112, § 67.

SECTION 116. The board of aldermen of a city or the selectmen of a town in case of a public way, and the Massachusetts highway commission, in case of a state highway, may authorize structures or alterations within, or partly within, the limits thereof, which are necessary for carrying a street railway over or under a railroad, if such way is not thereby made unsafe for other public travel.

Structures
within limits
of public ways
or state high-
ways.
1898, 404, § 4.
R. L. 112, § 68.

LIENS FOR LABOR AND MATERIALS.

Liens for labor and materials. 1904, 373.

SECTION 117. A person to whom a debt is due for labor performed or for materials furnished and actually used in constructing a street railway under a contract with a person, other than the street railway company, who has authority from or is rightfully acting for such company in furnishing such labor or materials shall have a right of action against such company to recover such debt with costs, except as provided in the four following sections.

Exception. 1904, 373.

SECTION 118. A person who has contracted to construct the whole or a specified part of such street railway shall not have such right of action.

Filing of claims for labor. 1904, 373.

SECTION 119. A person shall not have such right of action for labor performed, unless, within thirty days after ceasing to perform it, he files in the office of the clerk of a city or town in which any of said labor was performed a written statement, under oath, of the amount of the debt so due to him and of the name of the person or persons for whom and by whose employment the labor was performed. Such right of action shall not be lost by a mistake in stating the amount due; but the claimant shall not recover as damages a larger amount than is specified in said statement as due him, with interest thereon.

— for materials. 1904, 373.

SECTION 120. A person shall not have such right of action for materials furnished, unless, before beginning to furnish them, he files in the office of the clerk of the city or town in which any of the materials were furnished, in the manner provided for filing the statement mentioned in the preceding section, a written notice of his intention to claim such right.

Statute of limitations. 1904, 373.

SECTION 121. Such action shall not be maintained unless it is begun within sixty days after the plaintiff ceased to perform such labor or to furnish such materials.

CHANGE OF NAME.

Change of name. 1891, 360, §§ 1, 2, 6. 1892, 198, 201. 1895, 104. 1898, 474, § 9. 1899, 164; 442, § 9.

SECTION 122. Upon the application of any street railway company, authorized by a vote of two thirds of the stockholders present and voting at a meeting called for the purpose, the board of railroad commissioners may, after public notice and a hearing, authorize such company to change its name.

1901, 422, § 9.

R. L. 109, § 9.

— certificate of, to be filed with secretary of the commonwealth. 1891, 360, §§ 3, 6. R. L. 109, § 10.

SECTION 123. A certified copy of such authorization and a certificate of the vote of the corporation, signed and sworn to by the president, treasurer and a majority of the directors, shall be filed in the office of the secretary of the commonwealth. The board of railroad commissioners shall require public notice to be given of the change so authorized; and upon receipt of proof thereof the secretary of the commonwealth may grant a certificate of the name which the company shall bear, which, subject to the restrictions of section four, shall thereafter be its legal name.

SECTION 124. A street railway company shall have the same rights, powers and privileges, and be subject to the same duties, obligations and liabilities, under its new name as before its name was changed, and may sue and be sued by its new name; but any action brought against it by its former name shall not be defeated on that account, and, on motion of either party, the new name may be substituted therefor.

Rights and liabilities under new name.
1891, 360, § 4.
R. L. 109, § 11.

TAXATION.

[For law as to taxation of corporate franchises, see 1909, 490, Part III, §§ 39-43, pages 145-148].

A. Corporate Franchise Tax.

SECTION 125. Every street railway company organized under general or special laws of the commonwealth, in addition to all returns required by its charter, shall annually, between the first and tenth days of [May,] *April*, return to the tax commissioner, under the oath of its treasurer, the amount of the capital stock of the company, its place of business and the par value and market value of the shares made up as of said first day of [May,] *April*. It shall also contain a statement in detail of the works, structures, real estate and machinery owned by said company and subject to local taxation within the commonwealth, and of the location and value thereof. A street railway company, whether chartered or organized in this commonwealth or elsewhere, shall also state in its return the whole length of its line, and so much of the length of its line as is without the commonwealth; also the length of track operated by it in each city and town on the thirtieth day of [September] *June* preceding the return, to be determined by measuring as single track the total length of all tracks operated by it including sidings and turn-outs whether owned or leased by it or over which it has trackage rights only; and the amount of dividends paid on its capital stock during the year ending on such preceding thirtieth day of [September] *June* and during each year, ending on the thirtieth day of September prior to September thirtieth, nineteen hundred and ten, and during each year ending on the thirtieth day of June beginning with the year ending on the thirtieth day of June, nineteen hundred and eleven, from the organization of the company, and the amount of such dividends paid during the nine months ending on the thirtieth day of June, nineteen hundred and ten.

Annual returns to tax commissioner.
1864, 208, §§ 2, 3.
1865, 283, § 3.
1880, 117, § 2.
P. S. 13, § 38.
1885, 238, § 1.
1886, 270.
1888, 413, § 24.
1898, 417; 578, § 2.
R. L. 14, § 37.
12 Allen, 75.
98 Mass. 25.
139 Mass. 561.
144 Mass. 598.
146 Mass. 408.
157 Mass. 70.
[1 Op. A. G. 278.]
187 Mass. 352.
207 Mass. 622.
Amended by 1909, 439; 440, § 2; 502, § 3.
See 1907, 395; 1908, 220, 615.

Acts of 1909, Chapter 440.

An Act to change the Date for the Assessment of Taxes, and the Listing and Registration of Voters.

SECTION 1. The first day of April instead of the first day of May shall hereafter be the date for the assessment of taxes.

SECTION 8. All acts and parts of acts inconsistent herewith are hereby repealed.

Acts of 1909, Chapter 502, § 3.

1906, 463,
Part III, § 125,
amended.

SECTION 3. Section one hundred and twenty-five of Part III of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby amended by striking out the word "May", in the fourth and eighth lines, respectively, and inserting in each instance, in place thereof the word:— April, — by striking out in the seventeenth and twenty-third lines, the word "September", and inserting in place thereof the word:— June, — and by inserting after the word "year", in the twenty-fourth line, the words:— ending on the thirtieth day of September prior to September thirtieth, nineteen hundred and ten, and during each year ending on the thirtieth day of June beginning with the year ending on the thirtieth day of June, nineteen hundred and eleven, — and by adding at the end of said section the words:— and the amount of such dividends paid during the nine months ending on the thirtieth day of June, nineteen hundred and ten, — so that said section, as amended, will read as follows:— *Section 125.* [For § 125 as amended, see above.]

Valuation of
corporate fran-
chise, etc.
Deductions.
1864, 208, §§ 5,
6.
1865, 283, §§ 4,
5.
1880, 117, § 2.
P. S. 13, §§ 39,
40.
1885, 238, § 1.
1886, 270.
1898, 417.
R. L. 14, § 38.
13 Allen, 301.
98 Mass. 19,
25.
100 Mass. 184,
399.
125 Mass. 568.
137 Mass. 80.
139 Mass. 561.
144 Mass. 598.
146 Mass. 408.
152 Mass. 372.
157 Mass. 70.
167 Mass. 522.
213 Mass. 58.
163 U. S. 1.
Amended by
1909, 439;
440, § 2.

SECTION 126. The tax commissioner shall ascertain from the returns or otherwise the true market value of the shares of each street railway company, and shall estimate therefrom the fair cash value of all of said shares constituting its capital stock on the preceding first day of [May,] *April*, which, unless by the charter of the company a different method of ascertaining such value is provided, shall, for the purposes of this act, be taken as the true value of its corporate franchise. From such value there shall be deducted, in case of a street railway company whether chartered or organized in this commonwealth or elsewhere, so much of the value of its capital stock as is proportional to the length of that part of its line, if any, lying without the commonwealth; and also the value of its real estate and machinery subject to local taxation within the commonwealth. For the purposes of this section, the tax commissioner may take the value at which such real estate and machinery is assessed at the place where it is located as the true value, but such local assessment shall not be conclusive of the true value thereof.

See 1908, 220, 615; 1909, 439, § 1; 490, Part III, §§ 39-51.

Acts of 1909, Chapter 439.

An Act relative to the Taxation of Poles for Wires.

R. L. 12, § 23,
and 1902, 342,
§ 1, amended.
Amended by
1909, 440, § 2.

SECTION 1. Section twenty-three of chapter twelve of the Revised Laws, as amended by section one of chapter three hundred and forty-two of the acts of the year nineteen hundred and two, is hereby further amended by inserting after the word "streets", in the second line of the tenth paragraph, the words:— and poles, underground conduits and pipes, together with the wires thereon or therein, laid in or erected upon private property, or in a railroad location, — by inserting after the word "companies", in the third line, the words:— the value of whose poles, underground conduits and pipes, together with the wires thereon or therein, for the purpose of taxation, shall, like their rails and rights of way, be included in, and not deducted from, the value of their corporate franchises ascertained as provided by section one hundred and twenty-six of Part III of chapter four hundred and sixty-three of the acts of the year

nineteen hundred and six, and excepting also such poles, underground conduits, wires and pipes of a railroad corporation laid in the location of said railroad,—and by adding at the end of said paragraph, the words:— or erected,—so that said paragraph will read as follows:—Tenth. Underground conduits, wires and pipes laid in public streets, and poles, underground conduits and pipes, together with the wires thereon or therein, laid in or erected upon private property, or in a railroad location, by any corporation, except street railway companies, the value of whose poles, underground conduits and pipes, together with the wires thereon or therein, for the purpose of taxation, shall, like their rails and rights of way, be included in, and not deducted from, the value of their corporate franchises ascertained as provided by section one hundred and twenty-six of Part III of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six, and excepting also such poles, underground conduits, wires and pipes of a railroad corporation laid in the location of said railroad, shall be assessed to the owners thereof in the cities or towns in which they are laid or erected.

Taxation of poles for wires.

SECTION 2. Section thirty-eight of chapter fourteen of the Revised Laws, as amended by section three of chapter three hundred and forty-two of the acts of the year nineteen hundred and two, is hereby further amended by inserting before the word "underground", in the seventeenth, thirtieth, thirty-eighth and forty-third lines, the word:— poles,— by striking out the word "is", in the forty-third line, and inserting in place thereof the word:— are,— and by striking out the words "it is", in the forty-fourth line, and inserting in place thereof the words:— they are,— so as to read as follows:— *Section 38.* The tax commissioner shall ascertain from the returns or otherwise the true market value of the shares of each corporation subject to the requirements of the preceding section, and shall estimate therefrom the fair cash value of all of said shares constituting its capital stock on the preceding first day of May, which, unless by the charter of a corporation a different method of ascertaining such value is provided, shall, for the purposes of this chapter, be taken as the true value of its corporate franchise. From such value there shall be deducted:—

R. L. 14, § 38, amended. Amended by 1909, 440, § 2.

Valuation of corporate franchise, etc. Deductions.

First. In case of a railroad or telegraph company or of a street railway company whether chartered or organized in this commonwealth or elsewhere, so much of the value of its capital stock as is proportional to the length of that part of its line, if any, lying without the commonwealth; and also the value of its real estate, machinery and poles, underground conduits, wires and pipes, subject to local taxation within the commonwealth.

Second. In case of such a domestic telephone company, the amount and market value of all stock in other corporations held by it upon which a tax has been paid in this or other states for the twelve months last preceding the date of the return; and in case of such a foreign telephone company, so much of the value of its capital stock as is proportional to the number of telephones used or controlled by it or under any letters patent owned or controlled by it without the commonwealth. In case of a telephone company, whether chartered or organized in this commonwealth or elsewhere, the value of its real estate, machinery and poles, underground conduits, wires and pipes, subject to local taxation within the commonwealth.

Third. In case of corporations subject to the requirements of the preceding section other than railroad, telegraph, telephone or street railway companies, whether chartered or organized in this commonwealth or elsewhere, the value as found by the tax commissioner of their

real estate, machinery and poles, underground conduits, wires and pipes, subject to local taxation wherever situated.

For the purposes of this section, the tax commissioner may take the value at which such real estate, machinery and poles, underground conduits, wires and pipes are assessed at the place where they are located as the true value, but such local assessment shall not be conclusive of the true value thereof.

R. L. 14, § 39,
amended.
See 1909, 490,
Part III, § 42.

Corporation
to appeal from
local valuation,
when.

SECTION 3. Section thirty-nine of said chapter fourteen, as amended by section four of said chapter three hundred and forty-two, is hereby further amended by inserting before the word "underground", in the third line, the word:— poles,— so as to read as follows:— *Section 39.* The tax commissioner may require a corporation to prosecute an appeal from the valuation of its real estate, machinery or poles, underground conduits, wires and pipes by the assessors of a city or town, either to the county commissioners or to the superior court, whose decision shall be conclusive upon the question of value. Upon such appeal the tax commissioner may be heard, and in the superior court costs may be awarded as justice requires.

R. L. 14, § 42.
amended.
See 1909, 490,
Part III, § 45.

Remedy of
corporation
when assessor's
valuation of
real estate
exceeds tax
commissioner's.

SECTION 4. Section forty-two of said chapter fourteen, as amended by section five of said chapter three hundred and forty-two, is hereby further amended by inserting before the word "underground", in the second line, the word:— poles,— so as to read as follows:— *Section 42.* If the value of the real estate, machinery and poles, underground conduits, wires and pipes of a corporation subject to local taxation within the commonwealth, as determined by the tax commissioner, is less than the value thereof as determined by the assessors of the place where it is situated, he shall give notice of his determination to such corporation; and, unless within one month after the date of such notice it applies to said assessors for an abatement and, upon their refusal to grant an abatement, prosecutes an appeal under the provisions of section seventy-seven of chapter twelve, giving notice thereof to the tax commissioner, the valuation of said commissioner shall be conclusive upon said corporation.

SECTION 5. This act shall take effect upon its passage. [*Approved May 24, 1909.*]

LIST OF SHAREHOLDERS TO BE FURNISHED.

Acts of 1912, Chapter 124.

An Act relative to Returns of Street Railway Companies filed in the Office of the Tax Commissioner.

1909, 490,
Part III, § 40,
cl. 3, amended.
[See p. 145.]

Clause Third of section forty of Part III of chapter four hundred and ninety of the acts of the year nineteen hundred and nine is hereby amended by striking out the words "except as to street railway companies", in the first line, so that the first paragraph of the said clause will read as follows:— Third. And a complete list of the shareholders of the corporation, their residences, and the amount and class of stock, if more than one, belonging to each. If stock is held as collateral security, the list shall state the name and residence of the pledgor and of the pledgee. [*Approved February 20, 1912.*]

Company's
appeal from
local valua-
tion.
1865, 283, § 6.
P. S. 13, § 41.
1890, 127, § 7.
1898, 417.
R. L. 14, § 39.

SECTION 127. The tax commissioner may require the company to prosecute an appeal from the valuation of its real estate or machinery by the assessors of a city or town, either to the county commissioners or to the superior court, whose decision shall be conclusive upon the question of value. Upon such

appeal the tax commissioner may be heard, and in the superior court costs may be awarded as justice requires.

SECTION 128. Every street railway company subject to the provisions of section one hundred and twenty-five shall annually pay a tax upon its corporate franchise, after making the deductions provided for in section one hundred and twenty-six, at a rate equal to the average of the annual rates for the three years preceding the year in which the assessment is laid, the annual rate to be determined by an apportionment of the whole amount of money to be raised by taxation upon property in the commonwealth during the same year as returned by the assessors of the several cities and towns under the provisions of section ninety-three of chapter twelve of the Revised Laws and amendments thereof upon the aggregate valuation of all cities and towns for the preceding year as returned under sections sixty and sixty-one of said chapter and amendments thereof; but if the return from any city or town is not received [prior to the twentieth day of] on or before the first Monday of August, the amount raised by taxation in said city or town for the preceding year, as certified to the [secretary of the commonwealth] tax commissioner may be adopted for the purpose of this determination. The amount of tax assessed upon polls for the preceding year, as certified to [said secretary,] the tax commissioner may be taken as the amount of poll tax to be deducted from the whole amount to be raised by taxation, in ascertaining the amount to be raised upon property.

See 1908, 220, 615; 1909, 439, § 1; 490, Part III, §§ 39-51.
Tax to be paid on corporate franchise.
Rate, how determined.
1864, 208, § 5.
1865, 283, § 5.
1880, 117, § 2.
P. S. 13, § 40.
1885, 238, § 1.
1886, 270.
1888, 413, § 24.
1898, 417.
R. L. 14, § 40.
12 Allen, 75, 298.
98 Mass. 19, 25.
99 Mass. 146, 151.
105 Mass. 527.
135 Mass. 569.
137 Mass. 80.
139 Mass. 561.
146 Mass. 408.
157 Mass. 70.
167 Mass. 522.
6 Wallace, 632.
178 U. S. 120.
[For R. L. 12, § 93, see p. 142.]
Amended by 1909, 513, § 2.
See 1908, 220, 615; 1909, 439, § 1; 490, Part III, §§ 39-51, 1912, 695.

Acts of 1909, Chapter 513, § 2.

SECTION 2. Section one hundred and twenty-eight of Part III of said chapter four hundred and sixty-three is hereby amended by inserting after the word "rate", in the fifth line, the words: — equal to the average of the annual rates for the three years preceding the year in which the assessment is laid, the annual rate to be, — by inserting after the word "Laws", in the tenth line, the words: — and amendments thereof, — by inserting after the word "chapter", in the twelfth line, the words: — and amendments thereof, — by striking out the words "prior to the twentieth day of", in the thirteenth and fourteenth lines, and inserting in place thereof the words: — on or before the first Monday of, — by striking out the words "secretary of the commonwealth", in the sixteenth line, and inserting in place thereof the words: — tax commissioner, — and by striking out the words "said secretary", in the nineteenth line, and inserting in place thereof the words: — the tax commissioner, — so as to read as follows: — Section 128. [For § 128 as amended, see above.]

1906, 463, Part III, § 128, amended.

SECTION 129. If the value of the real estate and machinery of a street railway company subject to local taxation within the commonwealth, as determined by the tax commissioner, is less than the value thereof as determined by the assessors of the place where it is situated, he shall give notice of his determination to such company; and, unless within one month after the date of such notice it applies to said assessors for an abatement, and, upon their refusal to grant an abatement, prosecutes

Remedy of company when assessors' valuation of real estate exceeds tax commissioner's.
1865, 283, § 6.
P. S. 13, § 41.
1898, 417.
R. L. 14, § 42.
137 Mass. 81.
146 Mass. 403.

152 Mass. 384.
167 Mass. 522.
[For R. L. 12,
§ 77, see page
143.]
See 1908, 220,
615; 1909, 439,
§ 1; 490, Part
III, §§ 39-51.
1912, 695.

an appeal under the provisions of section seventy-seven of chapter twelve of the Revised Laws, giving notice thereof to the tax commissioner, the valuation of said commissioner shall be conclusive upon said company.

B. Additional Corporate Franchise Tax.

Additional
corporate
franchise tax.
1898, 417; 578,
§ 3.
R. L. 14, § 41.
Amended,
1909, 502, § 4.
See 1908, 220,
615; 1909, 439,
§ 1; 490, Part
III, §§ 39-51.

SECTION 130. If an operating street railway company, including a company whose lines are located partly within and partly without the limits of the commonwealth, whether chartered or organized under the laws of this commonwealth or elsewhere, has paid during the nine months ending on the thirtieth day of June in the year nineteen hundred and ten or during the year ending on the thirtieth day of [September] June in the year nineteen hundred and eleven or in any subsequent year preceding the date of the return required by section one hundred and twenty-five dividends exceeding in the aggregate eight per cent upon its capital stock, it shall for every such year, in addition to the tax required by section one hundred and twenty-eight, pay a tax equal to the amount of such excess to be determined as therein provided by the tax commissioner; but such additional tax shall not be imposed, if, from the date when the company commenced to operate its railway, it has not paid dividends equivalent in the aggregate to at least six per cent per annum upon its capital stock from year to year.

Acts of 1909, Chapter 502, § 4.

1906, 463,
Part III, § 130,
amended.

SECTION 4. Section one hundred and thirty of Part III of said chapter four hundred and sixty-three is hereby amended by inserting after the word "during", in the fifth line, the words: — the nine months ending on the thirtieth day of June in the year nineteen hundred and ten or during, — and by striking out in the sixth line, the word "September", and inserting in place thereof the words: — June in the year nineteen hundred and eleven or in any subsequent year, — so that said section as amended will read as follows: — *Section 130.* [For § 130 as amended, see above.]

Acts of 1909, Chapter 490, Part III, §§ 44, 45, 46.

ADDITIONAL CORPORATE FRANCHISE TAX.

Additional tax
on street rail-
way and elec-
tric railroad
companies.
1898, 417;
578, § 3.
R. L. 14, § 41.
1906, 463,
Part III, § 130;
516, § 18.

SECTION 44. If an operating street railway or electric railroad company, including a company whose lines are located partly within and partly without the limits of the commonwealth, whether chartered or organized under the laws of this commonwealth or elsewhere, has paid during the year ending on the thirtieth day of September preceding the date of the return required by section forty dividends exceeding in the aggregate eight per cent upon its capital stock, it shall for every such year, in addition to the tax required by section forty-three, pay a tax equal to the amount of such excess to be determined as therein provided by the tax commissioner; but such additional tax shall not be imposed, if, from the date when the company commenced to operate its railway or railroad, it has not paid dividends equivalent in the aggregate to at least six per cent per annum upon its capital stock from year to year.

SECTION 45. If the value of the works, structures, real estate, machinery, underground conduits, wires and pipes of a corporation subject to local taxation within the commonwealth, as determined by the tax commissioner, is less than the value thereof as determined by the assessors of the place where it is situated, he shall give notice of his determination to such corporation; and, unless within one month after the date of such notice it applies to said assessors for an abatement, and, upon their refusal to grant an abatement, prosecutes an appeal under the provisions of section seventy-six of Part I, giving notice thereof to the tax commissioner, the valuation of said commissioner shall be conclusive upon said corporation.

137 Mass. 81.

146 Mass. 403.

152 Mass. 384.

167 Mass. 522.

Remedy of corporation when assessor's valuation of real estate exceeds tax commissioner's.
1865, 283, § 6.
P. S. 13, § 41.
1898, 417.
R. L. 14, § 42.
1902, 342, § 5.
1903, 437, § 76.
1906, 463.
Part II, § 215.
Part III, § 129;
516, § 19.

SECTION 46. When the tax commissioner has received notice of an abatement of the taxes of any corporation as provided in section eighty-four of Part I, he shall assess upon such corporation an additional tax upon the corporate franchise value of such corporation, in such amount as shall make the total franchise tax equal that which would have been assessed by said commissioner had the valuation as established by said abatement been adopted by him when making his original assessment upon the corporate franchise value of such corporation, which said additional tax shall be paid and collected as an addition to the franchise tax next to be assessed and laid upon said corporation after such abatement, and such additional tax, when collected, shall be distributed as if it were part of said original tax.

Additional tax to be assessed upon corporate franchise value, etc.
1904, 442, § 2.

C. Exemption and Apportionment.

SECTION 131. No taxes shall be assessed in a city or town for state, county or town purposes, upon the shares in the capital stock of a street railway company for any year for which it pays to the treasurer and receiver general a tax on its corporate franchise. The tax collected of each street railway company under the provisions of sections one hundred and twenty-eight and one hundred and twenty-nine shall be apportioned among the several cities and towns in proportion to the length of tracks operated by such company in said cities and towns respectively. The share of the tax paid by a street railway company in respect of its tracks upon locations granted by the board of metropolitan park commissioners or by the Wachusett mountain state reservation commission or by the Greylock reservation commission, shall be apportioned to the commonwealth and shall be credited by the treasurer and receiver general to the sinking fund of the loan to which the expenditure for the road, boulevard, park or reservation in which the tracks are located was charged.

Exemption from local taxation.
Apportionment.
1864, 208, §§ 8, 15.
1865, 283, § 15.
1866, 291, § 2.
P. S. 13, § 57.
1887, 228.
1888, 413, § 23.
1898, 417; 578, §§ 4, 26.
1900, 413, § 5.
1901, 413, § 4.
R. L. 14, § 61.
135 Mass. 569.
139 Mass. 559.
Amended,
1912, 695.
See 1908, 220,
615; 1909,
439, § 1; 490,
Part III,
§§ 39-51.

SECTION 132. The tax commissioner shall, subject to appeal to the board of appeal, ascertain and determine the amount due to each city and town under the provisions of the preceding section, notify the treasurer of each city and town thereof and certify the amount as finally determined, to the treasurer and receiver general, who shall thereupon pay over the same.

Tax commissioner to determine amounts due to cities and towns.
1865, 283, § 15.
P. S. 13, § 58.
1898, 578, §§ 4, 5.
R. L. 14, § 62.

Acts of 1912, Chapter 695.

An Act relative to the Taxation of Street Railway Companies in Respect of Tracks upon Locations granted by the Greylock Reservation Commission.

1906, 463,
Part III, § 131,
amended.

SECTION 1. Section one hundred and thirty-one of Part III of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby amended by inserting after the word "commission", in the fourteenth line, the words:— or by the Greylock reservation commission,— so as to read as follows:— *Section 131. [For § 131 as amended, see above.]*

Acts of 1909, Chapter 490, Part I, § 23, Clause 10, as amended by 1913, 458.

Assessment of
underground
conduits, etc.
1902, 342, § 1.
193 Mass. 274.
1909, 490,
Part I, § 23,
cl. 10,
amended
by 1913, 458.

SECTION 23. All personal estate, within or without the commonwealth, shall be assessed to the owner in the city or town in which he is an inhabitant on the first day of May, except as provided in Part III and in the following clauses of this section:—

Tenth, Underground conduits, wires and pipes laid in public streets, except such as are owned by a street railway company, and poles, underground conduits and pipes together with the wires thereon or therein laid in or erected upon private property or in a railroad location by any corporation, except such poles, underground conduits, wires and pipes of a railroad corporation laid in or erected upon the location of such railroad, and except such poles, underground conduits, wires and pipes laid in or erected upon any right of way owned by a street railway company, shall be assessed to the owners thereof in the cities and towns in which they are laid or erected.

D. Commutation Tax.

Annual
returns to
assessors.
1898, 417; 578,
§ 6.
R. L. 14, § 43.
207 Mass. 519,
521.
See 1908, 220,
615; 1909,
439, § 1;
490, Part III,
§§ 39-51.

SECTION 133. A street railway company, including a company whose lines are located partly within and partly without the limits of the commonwealth, whether chartered or organized under the laws of this commonwealth or elsewhere, shall annually, on or before the fifteenth day of October, make and file in the office of the board of assessors of every city and town in which any part of the railway operated by it is situated a return signed and sworn to by its president and treasurer, stating the length of track operated by it in public ways and places in such city or town, and also the total length of track operated by it in public ways and places, determined as provided in section one hundred and twenty-five, and also the amount of its gross receipts during the year ending on the preceding thirtieth day of September, including therein all amounts received by it from the operation of its railway, but excluding income derived from sale of power, rental of tracks or other sources.

Excise tax.
1898, 417; 578,
§ 7.
R. L. 14, § 44.
207 Mass. 519.
See 1908, 220,
615; 1909, 439,
§ 1; 490, Part
III, §§ 39-51.

SECTION 134. On or before the first day of November annually, the assessors of every city and town in which a street railway is operated, including a company whose lines are located partly within and partly without the limits of the commonwealth, whether chartered or organized under the laws of this commonwealth or elsewhere, shall assess on each company described in the preceding section operating a railway therein an

excise tax of an amount equal to such proportion of the following percentages of the gross receipts of such company as the length of tracks operated by it in public ways and places of such city or town bears to the total length of tracks operated by it in public ways and places.

The percentages shall be based upon the annual gross receipts for each mile of track as follows and computed upon the aggregate of said annual gross receipts: four thousand dollars or less, one per cent; more than four thousand dollars and less than seven thousand, two per cent; more than seven thousand dollars and less than fourteen thousand, two and one quarter per cent; more than fourteen thousand dollars and less than twenty-one thousand, two and one half per cent; more than twenty-one thousand dollars and less than twenty-eight thousand, two and three quarters per cent; twenty-eight thousand dollars or more, three per cent.

The excise tax provided by this section shall be in addition to the taxes otherwise provided by law.

SECTION 135. The aldermen of a city, the selectmen of a town or a street railway company operating in such city or town may petition the board of railroad commissioners for a revision of the amount of the excise tax to be paid by a company under the provisions of the preceding section. Said board shall, upon such petition, after public notice and a hearing at which said aldermen or selectmen and said company may submit evidence, determine the average annual cost to said city or town of the work done by it during the preceding three years under the provisions of this act which it was not by law required to do prior to the first day of October in the year eighteen hundred and ninety-eight, and also the average annual payments made by said company to said city or town under and pursuant to the provisions of the preceding section during said three years; and having determined said average annual cost and average annual payments, said board shall fix and determine the proportion of a percentage of the gross receipts which shall be paid as an excise tax under the provisions of said section by the company to said city or town annually thereafter, said percentage to be fixed at such a rate as will be necessary to yield to said city or town annually thereafter an amount equal to the average annual cost to said city or town determined as aforesaid; and the percentage so fixed shall not be again changed for the period of three years and only in the manner herein provided. Said board may at any time upon petition therefor by a city or town entitled to a part of the excise tax paid by a street railway company, after such notice as the board may order to all other cities and towns entitled to share in the excise tax paid by said company, and after a hearing, determine as to the distribution thereof among the several cities and towns in which such company operated any part of its railway, and fix the proportions thereof to which they shall respectively be entitled, which shall thereafter be the proportions of said excise tax to

Revision of
tax.
1898, 578, § 8.
R. L. 14, § 45.
207 Mass. 614.
See 1908, 220,
615; 1909, 439,
§ 1; 490, Part
III, §§ 39-61.

be assessed upon said company, instead of the proportion based upon length of tracks as hereinbefore provided.

Notice to tax collector of amount of excise tax.
1898, 578, § 9.
R. L. 14, § 46.
See 1908, 220, 615; 1909, 439, § 1; 490, Part III, §§ 39-51.

SECTION 136. Prior to the fifteenth day of November in each year, the assessors of every city and town shall notify the collector of taxes thereof of the amount of excise tax assessed therein under the provisions of section one hundred and thirty-four, and the collector shall forthwith notify the treasurer of every street railway company of the amount of excise tax so assessed upon it, which shall become due and payable within thirty days after the receipt of such notice. The provisions of chapter thirteen of the Revised Laws, so far as appropriate, shall apply to the collection of such excise tax.

Acts of 1909, Chapter 490, Part III, §§ 47-50.

COMMUTATION TAX.

Returns of street railway and electric railroad companies to assessors.
1898, 417; 578, § 6.
R. L. 14, § 43.
1906, 463, Part III, § 133; 516, § 22.
181 Mass. 205.
182 Mass. 41, 49.
184 Mass. 294.
187 Mass. 352.
190 Mass. 123.
196 U. S. 539.
207 Mass. 520.
Amended by 1912, 457, § 2.

SECTION 47. A street railway or an electric railroad company, including a company whose lines are located partly within and partly without the limits of the commonwealth, whether chartered or organized under the laws of this commonwealth or elsewhere, shall annually, on or before the fifteenth day of October, make and file in the office of the board of assessors of every city and town in which any part of the railway or railroad operated by it is situated a return signed and sworn to by its president and treasurer, stating, *as of the thirtieth day of September preceding the return*, in the case of a street railway company, the length of track operated by it in public ways and places in such city or town, and also the total length of track operated by it in public ways and places, and in the case of an electric railroad company stating the length of track operated by it longitudinally upon public ways and places in such city or town, and also the total length of track operated by it, determined as provided in section forty, and also the amount of its gross receipts during the year ending on the preceding thirtieth day of September, including therein all amounts received by it from the operation of its railway or railroad, but excluding income derived from the sale of power, rental of tracks or other sources.

Excise tax.
1898, 417; 578, § 7.
R. L. 14, § 44.
1906, 463, Part III, § 134; 516, § 23.
181 Mass. 205.
182 Mass. 41, 49.
184 Mass. 294.
187 Mass. 352.
190 Mass. 123.
196 U. S. 539.
207 Mass. 517, 520.

SECTION 48. On or before the first day of November annually, the assessors of every city and town in which a street railway or an electric railroad is operated, including a company whose lines are located partly within and partly without the limits of the commonwealth, whether chartered or organized under the laws of this commonwealth or elsewhere, shall assess on each company described in the preceding section operating a railway or railroad therein an excise tax of an amount equal to such proportion of the following percentages of the gross receipts of such company as, in the case of a street railway company, the length of tracks operated by it in public ways and places of such city or town bears to the total length of tracks operated by it in public ways and places, and in the case of an electric railroad company as the length of tracks operated by it longitudinally in public ways and places of such city or town bears to the total length of tracks operated by it.

The percentages shall be based upon the annual gross receipts for each mile of track as follows, and computed upon the aggregate of said annual gross receipts: four thousand dollars or less, one per cent; more than four thousand dollars and less than seven thousand, two per cent; more than seven thousand dollars and less than fourteen thousand, two and one quarter per cent; more than fourteen thousand dollars and less than

twenty-one thousand, two and one half per cent; more than twenty-one thousand dollars and less than twenty-eight thousand, two and three quarters per cent; twenty-eight thousand dollars or more, three per cent.

The excise tax provided by this section shall be in addition to the taxes otherwise provided by law.

SECTION 49. The aldermen of a city, the selectmen of a town, or a street railway or an electric railroad company operating in such city or town may petition the board of railroad commissioners for a revision of the amount of the excise tax to be paid by a company under the provisions of the preceding section. Said board shall, upon such petition, after public notice and a hearing at which said aldermen or selectmen and said company may submit evidence, determine the average annual cost to said city or town of the work done by it during the preceding three years under the provisions of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six, which it was not by law required to do prior to the first day of October in the year eighteen hundred and ninety-eight, and also the average annual payment made by said company to said city or town under and pursuant to the provisions of the preceding section during said three years; and having determined said average annual cost and average annual payments, said board shall fix and determine the proportion of a percentage of the gross receipts which shall be paid as an excise tax under the provisions of said section by the company to said city or town annually thereafter, said percentage to be fixed at such a rate as will be necessary to yield to said city or town annually thereafter an amount equal to the average annual cost to said city or town determined as aforesaid; and the percentage so fixed shall not again be changed for the period of three years, and then only in the manner herein provided. Said board may at any time upon petition therefor by a city or town entitled to a part of the excise tax paid by a street railway or an electric railroad company, after such notice as the board may order to all other cities and towns entitled to share in the excise tax paid by said company, and after a hearing, determine as to the distribution thereof among the several cities and towns in which such company operates any part of its railway or railroad, and fix the proportions thereof to which they shall respectively be entitled, which shall thereafter be the proportions of said excise tax to be assessed upon said company, instead of the proportion based upon length of tracks as hereinbefore provided.

SECTION 50. Prior to the fifteenth day of November in each year the assessors of every city and town shall notify the collector of taxes thereof of the amount of excise tax assessed therein under the provisions of section forty-eight, and the collector shall forthwith notify the treasurer of each street railway and electric railroad company of the amount of excise tax so assessed upon it, which shall become due and payable within thirty days after the receipt of such notice. The provisions of Part II, so far as appropriate, shall apply to the collection of such excise tax.

Revision of
tax.
1898, 578, § 8.
R. L. 14, § 45.
1906, 463,
Part III, § 135;
516, § 24.
184 Mass. 296.
207 Mass. 520.

Notice to tax
collector of
amount of
excise tax.
1898, 578, § 9.
R. L. 14, § 46.
1906, 463,
Part III, § 136;
516, § 25.
184 Mass. 296.
207 Mass. 520.

E. Application of Taxes.

SECTION 137. All taxes which are collected from a street railway company and paid to a city or town under the provisions of the preceding section, of section one hundred and thirty-two, and of section twenty-eight of chapter five hundred and seventy-eight of the acts of the year eighteen hundred and ninety-eight shall be applied toward the repair and maintenance

Application of
taxes.
1898, 578, § 10.
R. L. 14, § 47.
207 Mass. 520.
See 1908, 220,
615; 1909, 439,
§ 1; 490,
Part III,
§§ 39-51.

Amended by
1907, 318;
1909, 490,
Part III, § 51.

[of the portions of the public ways and places in which the tracks of such company are located, and to the removal of snow from such public ways and places within such city or town.] *of the public ways and the removal of snow therefrom within such city or town.*

Acts of 1907, Chapter 318.

An Act relative to the Removal of Snow by Street Railway Companies and to the Application of Taxes received from Such Companies.

1906, 463,
amended.
Application of
taxes.

SECTION 1. Section one hundred and thirty-seven of Part III of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby amended by striking out all after the word "maintenance", in the seventh line, and inserting in place thereof the words:— of the public ways and removal of snow therefrom within such city or town,— so as to read as follows:— *Section 137.* All taxes which are collected from a street railway company and paid to a city or town under the provisions of the preceding section, of section one hundred and thirty-two, and of section twenty-eight of chapter five hundred and seventy-eight of the acts of the year eighteen hundred and ninety-eight, shall be applied toward the repair and maintenance of the public ways and the removal of snow therefrom within such city or town.

SECTION 2. This act shall take effect upon its passage. [*Approved April 22, 1907.*]

Acts of 1909, Chapter 490, Part III, § 51.

Application of
taxes.
1898, 578, § 10.
R. L. 14, § 47.
1906, 463,
Part III, § 137;
516, § 26.
1907, 318.
181 Mass. 205.
182 Mass. 41.
184 Mass. 294.
190 Mass. 123.
207 Mass. 520.

SECTION 51. All taxes which are collected from a street railway or an electric railroad company and paid to a city or town under the provisions of the preceding section, of section sixty-five, and of section twenty-eight of chapter five hundred and seventy-eight of the acts of the year eighteen hundred and ninety-eight, shall be applied in the case of street railway companies toward the repair and maintenance of the public ways and the removal of snow therefrom within such city or town, and in the case of electric railroad companies shall be applied toward the construction, repair and maintenance of the public ways and places in which the tracks of such company are located, and to the removal of snow from such public ways and places within such cities and towns.

DISSOLUTION.

Dissolution.
1852, 55, §§ 1,
3.
G. S. 68, § 35.
P. S. 105, § 40.
R. L. 109, § 52.
7 Gray, 119,
393.
9 Gray, 34.
13 Allen, 497.
99 Mass. 267.
119 Mass. 447.

SECTION 138. If a majority in interest of the stockholders of a street railway company desire to close its affairs, they may file a petition therefor in the supreme judicial court or the superior court, setting forth in substance the grounds of their application, and the court, after notice to parties interested and a hearing, may decree a dissolution of said company. A company so dissolved shall be held to be extinct in all respects as if its corporate existence had expired by its own limitation.

Continuation
for three years
to close con-
cerns.
1819, 43.
R. S. 44, § 7.
G. S. 68, § 36.
P. S. 105, § 41.
R. L. 109, § 53.
16 Mass. 245.
22 Pick. 180.
23 Pick. 345.
123 Mass. 32.
161 Mass. 443.
See 1910, 187.

SECTION 139. Every street railway company whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it, and of enabling it gradually to settle and close its affairs, to dispose of and convey its prop-

erty, and to divide its capital stock, but not for the purpose of continuing the business for which it was established.

SECTION 140. If the charter of a street railway company expires or is annulled, or if the company is dissolved as provided in section one hundred and thirty-eight, or if its corporate existence for other purposes is terminated in any other manner, the supreme judicial court or the superior court, upon application of a creditor or stockholder, shall have jurisdiction in equity to appoint one or more receivers to take charge of its estate and effects, and to collect the debts and property due and belonging to it; with power to prosecute and defend suits in its name or otherwise, to appoint agents under them, and to do all other acts which might be done by such company, if in being, which may be necessary for the final settlement of its unfinished business. The powers of such receivers may be continued as long as the court finds necessary for said purposes.

Receivers.
1833, 145.
R. S. 44, §§ 8, 9.
1852, 55, § 2.
G. S. 68, §§ 37, 38.
P. S. 105, §§ 42, 43.
1884, 203.
R. L. 109, § 54.
157 Mass. 81.
See 1910, 187.

SECTION 141. The receivers shall pay all debts due from the company, if the funds in their hands are sufficient therefor; and if they are not, they shall distribute them ratably among the creditors who prove their debts in the manner directed by any decree of the court for that purpose. If there is a balance remaining after the payment of the debts, the receivers shall distribute and pay it to those who are justly entitled thereto as having been stockholders of the company, or their legal representatives.

— to pay debts and distribute surplus.
1833, 145.
R. S. 44, § 10.
1852, 55, § 2.
G. S. 68, § 39.
P. S. 105, § 44.
R. L. 109, § 55.
1 Gray, 382.

SECTION 142. If a petition, signed and sworn to by a majority in interest of the stockholders of a street railway company organized under the general laws, has, with the certificate of incorporation, been filed in the office of the secretary of the commonwealth, stating that such stockholders desire to surrender the certificate of incorporation and to have the company dissolved and giving their reasons therefor, the secretary, if he consider such reasons sufficient, shall require the petitioners to publish a notice in one or more newspapers in the county in which the principal office of the company is located, that, for reasons which appear to him to be sufficient, the certificate of incorporation of the company therein named is annulled. Upon the filing by the petitioner with the secretary of a copy of each newspaper in which the notice of dissolution was ordered to be published, the company shall be dissolved, subject to the provisions of the three preceding sections.

Surrender of certificate of incorporation.
1898, 502.
R. L. 109, § 56.

SECTION 143. If a street railway company is dissolved, the clerk of the court in which the decree for dissolution is entered shall forthwith make return thereof to the secretary of the commonwealth, giving the name of the company dissolved, and the date upon which such decree was entered.

Returns to secretary of the commonwealth of dissolution.
1880, 157.
P. S. 105, § 45.
R. L. 109, § 57.

SALE BY RECEIVERS.

SECTION 144. A receiver of the property of a street railway company may, by order of the court, sell and transfer the railway and property of such company, its locations and franchises,

Sale of railway by receivers.
1900, 381, §§ 1, 2, 6.
R. L. 112, § 12.

191 Mass. 525,
527.
209 Mass. 214.

on such terms and in such manner as the court may order. The purchasers from such receiver, and a company organized under the provisions of the following section, if such railway has been transferred to it, shall hold and possess said railway, all its rights and franchises and all property acquired in connection therewith, with the same rights and privileges and subject to the same duties and liabilities as the original street railway company; but no action shall be brought against such purchasers or such new company, to enforce any liability incurred by said original company, except debts and liabilities owing from said original company to any city or town within which the railway is operated and taxes and assessments for which said original company is liable under the statutes relating to street railways, which shall be assumed and paid by said new company. The provisions of this section shall not impair the powers of the holders of an outstanding mortgage to enforce their rights by suit or otherwise.

Agreement of
association of
new company.
1900, 381, §§ 3,
4, 5.
R. L. 112,
§§ 13, 14.
191 Mass. 526,
527.
209 Mass. 214.

SECTION 145. The purchasers at such sale shall, with their associates, to the number of at least fifteen, within sixty days after such sale, organize a company for the purpose of holding, owning and operating the street railway purchased, by filing in the office of the secretary of the commonwealth a written agreement of association, which shall state:

(a) That the subscribers thereto associate themselves with the intention of forming a street railway company.

(b) The corporate name assumed, which shall be one not in use by any other street railway company in this commonwealth, or, in the judgment of the board of railroad commissioners, so similar thereto as to be likely to be mistaken for it, and which shall contain the words, "street railway company", at the end thereof.

(c) The corporate name of the street railway company whose property and franchises have been purchased.

(d) The termini of the railway.

(e) The length of the railway, as nearly as may be.

(f) The name of each city and town in which the railway is located.

(g) The name of the court by which the sale was ordered, the date of such order, and the date of the sale.

(h) The total amount of the capital stock of the company, which shall be fixed at an amount approved by the board of railroad commissioners, but which shall not exceed the fair cost, as determined by said board, of replacing the railway and property so acquired, less the amount of any outstanding mortgages to which said railway and property may be subject in the hands of the new company.

(i) The par value of the shares, which shall be one hundred dollars.

(j) The names and residences of at least five persons, who shall be subscribers to the agreement of association, to act as directors until others are chosen and qualified in their stead.

Each associate shall subscribe to the agreement of association his name, residence, post office address, and the number of shares of stock which he agrees to take.

SECTION 146. The secretary of the commonwealth shall receive the agreement of association, and preserve the same in form convenient for reference and open to public inspection, and shall issue a certificate of incorporation in the form which is authorized by section nine. Thereupon, the company shall organize in the manner provided for the organization of a street railway company under general laws. Such company may begin business as soon as it is organized, and shall have all the rights and be subject to all the duties of a street railway company, except as otherwise provided in this and the preceding section. If said purchasers fail to organize a company as hereinbefore provided, all rights and powers to operate said railway shall thereupon cease.

Organization,
1900, 381, §§ 3,
4, 5.
R. L. 112,
§§ 13, 14,
191 Mass. 527.

SAVINGS BANKS.

[SECTION 147. In addition to the investments authorized by section twenty-six of chapter one hundred and thirteen of the Revised Laws, savings banks and institutions for savings may invest their deposits and the income derived therefrom in the bonds, approved by the bank commissioner, as hereinafter provided for, of any street railway company incorporated in this commonwealth, the railway of which is situated wholly or partly therein, and which has earned and paid annually for the five years last preceding the certification hereinafter provided for of the board of railroad commissioners dividends of not less than five per cent per annum upon all of its outstanding capital stock. In any case where two or more companies have been consolidated by purchase or otherwise during the five years prior to the certification aforesaid the payment severally from the earnings of each year of dividends equivalent in the aggregate to a dividend of five per cent upon the aggregate capital stocks of the several companies during the years preceding such consolidation shall be sufficient for the purpose of this section. Dividends paid to the stockholders of the West End Street Railway Company by way of rental shall be deemed to have been earned and paid by said West End Street Railway Company within the meaning of this section.]

Savings banks
may invest in
certain street
railway bonds.
1902, 483, § 1.
Repealed by
1908, 590, § 69.
1909, 491, § 8.

[SECTION 148. The board of railroad commissioners shall on or before the fifteenth day of January of each year transmit to the bank commissioner a list of all street railway companies which appear from the returns made by said companies to have properly paid, without impairment of assets or capital stock, the dividends required by the preceding section.]

Railroad commis-
sioners to
transmit list to
bank commis-
sioner.
1902, 483, § 2.
Repealed by
1908, 590, § 69.
1909, 491, § 8.

[SECTION 149. The bank commissioner shall, as soon as may be after the receipt of the list provided for in the preceding section, prepare a list of such bonds issued by any street railway company and certified by the board of railroad commis-

Bank commis-
sioner to pre-
pare lists.
1902, 483, § 3.
Repealed by
1908, 590, § 69.
1909, 491, § 8.

sioners, in accordance with the provisions of the preceding section, as the bank commissioner shall deem good and safe securities for the investments of savings banks and institutions for savings. Such list shall at all times be kept open to the inspection of the public.]

Savings banks may loan upon certain street railway bonds as collateral. 1904, 210. Repealed by 1908, 590, § 69, 1909, 491, § 8.

[SECTION 150. Savings banks and institutions for savings may invest their deposits and the income derived therefrom in the note or notes of any citizen of this commonwealth, with a pledge as collateral, at not more than the par value thereof, of the bonds of a street railway company in which the savings banks of the commonwealth are authorized by law to invest.]

SAVINGS BANKS — INVESTMENTS.

Acts of 1908, Chapter 590, § 68, clauses 5, 8.

STREET RAILWAY BONDS.

— may invest in other street railway bonds, etc. § 68 amended by 1909, 491, § 8; 1910, 622, § 10; 1912, 580; 1913, 291. See 1912, 128, and 1913, 291, as to failure of compliance for two successive years.

Fifth. In the bonds of any street railway company incorporated in this commonwealth, the railway of which is located wholly or in part therein, and which has earned and paid in dividends in cash an amount equal to at least five per cent upon all its outstanding capital stock in each of the five years last preceding the certification by the board of railroad commissioners hereinafter provided for. No such investment shall be made unless said company appears from returns made by it to the board of railroad commissioners to have properly paid said dividends without impairment of assets or capital stock, and said board shall on or before the fifteenth day of January in each year certify and transmit to the bank commissioner a list of such street railway companies.

Dividends paid by way of rental to stockholders of a leased street railway company shall be deemed to have been earned and paid by said company within the meaning of this clause, provided that said company shall have annually earned, and properly paid in dividends in cash, without impairment of assets or capital stock, an amount equal to at least five per cent upon all its outstanding capital stock in each of the five fiscal years next preceding the date of the lease thereof.

If two or more street railway companies have been consolidated by purchase or otherwise during the five years prior to said certification, the payment severally from the earnings of each year of dividends equivalent in the aggregate to a dividend of five per cent on the aggregate capital stocks of the several companies during the years preceding such consolidation shall be sufficient for the purpose of this act.

Amended. See 1909, 491, § 8. 1910, 358.

Eighth. . . . c. A bond or note of a gas, electric light, telephone or street railway corporation incorporated or doing business in this commonwealth and subject to the control and supervision thereof: *provided*, that the net earnings of said corporation, after payment of all operating expenses, taxes and interest, as reported to, and according to the requirements of, the proper authorities of the commonwealth, have been in each of the three fiscal years next preceding the making or renewing of such loan equal to not less than four per cent on all its capital stock outstanding in each of said years.

BOOKS, RETURNS AND REPORTS.

Books and returns. 1857, 40, §§ 5, 6; 240, §§ 1-3. 1858, 46, § 8. G. S. 63. §§ 143, 144.

SECTION 151. Every street railway company shall keep its books and accounts in a uniform manner, upon the system prescribed by the board of railroad commissioners; and the directors of every company shall annually, on or before the first

Wednesday of November, transmit to said board a return of the doings of the company for the year ending on the thirtieth day of September preceding, which shall be sworn to by themselves and by the treasurer and the superintendent of the company. Such return shall set forth copies of all leases and contracts made during the year with other companies and individuals, and shall contain full and complete information upon the several items contained in the form prescribed by said board. A company which owns a leased railway shall be responsible for the completeness and correctness of its annual return to the same extent as if the railway were in its own possession. If a return is defective or appears to be erroneous, the said board shall notify the company to amend it within fifteen days. A company which neglects to make a return, or to amend it when notified so to do, shall forfeit twenty-five dollars for each day during which such neglect continues.

1864, 229,
 §§ 40, 41,
 1870, 307, 383.
 1871, 381,
 §§ 52, 53, 56.
 1876, 173; 185,
 § 1.
 P. S. 113, § 58.
 R. L. 112, § 93.
See 1909, 502,
§ 1; 1910, 558,
pp. 160, 161.
All returns to
be for the year
ending June 30.

SECTION 152. The board of railroad commissioners may make changes in and additions to the form of the returns required by the preceding section, if it gives to the several companies one year's notice of any such changes and additions as require an alteration in the method or form of keeping their accounts; and shall annually, on or before the fifteenth day of September, furnish blank forms for such returns.

Board of rail-
 road commis-
 sioners may
 change form
 of returns; to
 furnish blanks.
 1857, 240, § 4.
 G. S. 63, § 145.
 1864, 229, § 42.
 1871, 381, § 54.
 P. S. 113, § 59.
 R. L. 112, § 94.

SECTION 153. The board of railroad commissioners shall prepare tables and abstracts of the returns of the several companies, and transmit said returns and tables and abstracts to the secretary of the commonwealth at the time and in the manner provided in section five of Part I for the transmission of the returns of railroad corporations.

Tables and
 abstracts of
 reports.
 1871, 381, § 55.
 P. S. 113, § 60.
 R. L. 112, § 96.

SECTION 154. The lessee of a street railway shall make to the company which owns it the same annual return under oath of the operations and business of the railway as is required of the company which owns it; and, for failure so to do, shall be liable in an action of tort to said company for all the penalties prescribed by law for failure by it to make its annual return.

Lessee of
 street railway
 to make same
 report to
 lessor.
 1864, 229, § 24.
 1871, 381, § 32.
 P. S. 113, § 61.
 R. L. 112, § 97.

SECTION 155. Every state board and commission shall keep a record of its proceedings in any matter considered by it under the provisions of this chapter or under any laws affecting street railways, in which it shall enter every request made by any party before it for a ruling of law and of its action upon such request, and the neglect either to grant or refuse such request shall be taken in any judicial review of such proceedings as a refusal.

Records of
 proceedings
 before boards.
 1898, 578, § 25.
 R. L. 112, § 98.
 192 Mass. 93.
 205 Mass. 96.

ADDITIONAL REMEDIES.

SECTION 156. If, in the judgment of the board of railroad commissioners, a street railway company has violated any law relative to such company, and after notice in writing from said board, continues such violation, or refuses or neglects to make returns as required by law, or to amend the same when lawfully required so to do, said board shall forthwith present the facts to the attorney-general for his action.

Board of rail-
 road commis-
 sioners to
 notify attor-
 ney-general of
 violations of
 law, etc.
 1870, 307, § 5;
 383, § 1.
 P. S. 113, § 62.
 R. L. 112, § 99.

Enforcement
of laws.
1861, 199, § 1.
1864, 229, § 43.
1866, 294, § 1.
1871, 381, § 57.
P. S. 113, § 63.
1891, 293.
1898, 578, § 25.
R. L. 112,
§ 100.
192 Mass. 92,
93, 116.
161 Mass. 416.
175 Mass. 518.
184 Mass. 310.
205 Mass. 96.
205 Mass. 214n,
216.

SECTION 157. The supreme judicial court or the superior court shall have jurisdiction in equity, upon the petition of a street railway company, or of the board of aldermen of a city or the selectmen of a town in which the street railway is located, or of any interested party, to compel the observance of and to restrain the violation of all laws which govern street railway companies, and of all orders, rules and regulations made in accordance with the provisions of this chapter by the board of aldermen of a city, the selectmen of a town or the board of railroad commissioners, and to review, annul, modify or amend the rulings of any state board or commission relative to street railways as law and justice may require.

Acts of 1913, Chapter 784, §§ 27, 28.

Jurisdiction in
equity to re-
view, annul,
etc., rulings or
orders of
commission.

SECTION 27. The supreme judicial court shall have jurisdiction in equity to review, annul, modify or amend any rulings or orders of the commission which are unlawful to the extent only of such unlawfulness. The procedure before the said court shall be that prescribed by its rules, which shall state upon what terms the enforcement of the order shall be stayed. The attorney for any party petitioning the supreme judicial court hereunder shall file with the clerk of the court a certificate that he is of opinion that there is such probable ground for the appeal as to make it a fit subject for judicial inquiry, and that it is not intended for delay; and double costs shall be assessed by the court upon any such party whose petition shall appear to the court not to be a fit subject for judicial inquiry or shall appear to be intended for delay. The burden of proof shall be upon the party adverse to the commission to show that its order is invalid. Any proceeding in any court of this commonwealth directly affecting an order of the commission or to which the commission is a party shall have preference over all other civil proceedings pending in such court, except election cases.

Jurisdiction to
enforce orders.

SECTION 28. The supreme judicial court shall have jurisdiction upon the application of the commission to enforce all valid orders of the commission and all the provisions of this act. Whenever the commission shall be of opinion that a common carrier subject to its supervision is failing or omitting or about to fail or omit to do anything required of it by law or by order of the commission, or is doing anything or about to do anything or permitting anything or about to permit anything to be done, contrary to or in violation of the law or of any order of the commission, it shall direct counsel to the commission to begin, subject to the supervision of the attorney-general, an action or proceeding in the supreme judicial court in the name of the commission for the purpose of having such violations or threatened violations stopped and prevented either by mandamus or injunctions.

Repeal.
210 Mass. 93.

SECTION 158. Sections forty-one, forty-three, forty-four, forty-five, forty-six and forty-seven of chapter fourteen of the Revised Laws, section twenty-two of chapter one hundred and six of the Revised Laws, chapter one hundred and twelve of the Revised Laws; chapters two hundred and eighty-eight, three hundred and seventy, three hundred and ninety-five, three hundred and ninety-six, three hundred and ninety-nine, four hundred and forty-nine and four hundred and eighty-three of the acts of the year nineteen hundred and two; chapters one hun-

dred and thirty-four, one hundred and forty-three, two hundred and two and four hundred and seventy-six of the acts of the year nineteen hundred and three; chapters one hundred and ten, two hundred and ten, two hundred and sixty-seven, three hundred and seventy-three and four hundred and forty-one of the acts of the year nineteen hundred and four; chapters eighty, one hundred and thirty-four and three hundred and seventy-six of the acts of the year nineteen hundred and five; and, so far only as they apply to street railways or street railway companies, their officers, agents or employees, sections thirty-seven, thirty-eight, thirty-nine, forty, forty-two, sixty-one and sixty-two of chapter fourteen of the Revised Laws, section one of chapter thirty-four of the Revised Laws, section twenty-one of chapter forty-seven of the Revised Laws, section eighty-five of chapter forty-eight of the Revised Laws, sections nine, ten, eleven, fifteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-four, twenty-five, twenty-seven, twenty-eight, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, forty, forty-one, forty-two, forty-three, forty-four, forty-five, forty-six, forty-seven, forty-eight, forty-nine, fifty, fifty-one, fifty-two, fifty-three, fifty-four, fifty-five, fifty-six and fifty-seven of chapter one hundred and nine of the Revised Laws, section twenty-eight of chapter one hundred and ten of the Revised Laws, section eleven of chapter one hundred and twenty-six of the Revised Laws; chapter four hundred and twenty-three of the acts of the year nineteen hundred and three; chapter three hundred and ninety-six of the acts of the year nineteen hundred and four; and chapters two hundred and sixty-six, two hundred and sixty-seven, two hundred and eighty-three and three hundred and thirty-nine of the acts of the year nineteen hundred and six are hereby repealed.

SECTION 159. The provisions of this act, so far as they are the same as those of existing statutes, shall be construed as a continuation thereof, and not as new enactments, and a reference in a statute which has not been repealed to provisions of law which have been wholly or partially revised and re-enacted herein shall be construed as applying to such provisions as so incorporated in this act. The repeal of a law by this act shall not affect any act done, ratified or confirmed, or any right accrued or established, or any action, suit or proceeding commenced under any of the laws repealed before the repeal took effect, or any action, suit or proceeding pending at the time of the repeal for an offence committed, or for the recovery of a penalty or forfeiture incurred, under any of the laws repealed, but the proceedings shall, when necessary, conform to the provisions of this act. Any provision of this act by which a punishment, penalty or forfeiture is mitigated may be extended and applied to any judgment pronounced after said repeal.

Provisions.
construction
of, etc.
202 Mass. 395.

SECTION 160. This act shall not affect any act passed in the year nineteen hundred and six unless such act is specifically repealed herein. [Approved June 7, 1906.]

Not to affect
certain acts,
unless, etc.

THE ELECTRIC RAILROAD LAW.

CHAPTER 516 OF THE ACTS OF 1906.

AN ACT RELATIVE TO ELECTRIC RAILROAD COMPANIES.

SECTIONS 1-13. Formation and powers.

SECTIONS 14-26. Taxation.

SECTION 27. Interested parties.

FORMATION AND POWERS.

Formation.

SECTION 1. Fifteen or more persons may associate themselves by a written agreement of association with the intention of forming an electric railroad company.

Powers.
See 1910, 587.

SECTION 2. Such company shall have authority, subject to the provisions of this act, to construct, operate and maintain a railroad or railway, including poles, wires, or other appliances and equipment connected therewith, of the class operated by electricity or by any power other than steam, which the board of railroad commissioners shall approve, and constructed wholly upon private land purchased or taken by said company under the provisions of this act; or constructed partly upon such private land so purchased or so taken by said company and partly upon public ways and places, but at least one half of which is constructed upon such private land. Such company shall have all the powers and privileges, and be subject to all the duties, liabilities and restrictions, relative to railroad corporations, set forth in chapter four hundred and sixty-three of the acts of the year nineteen hundred and six, except as is otherwise specially provided in this act.

Agreement of
association,
corporate
name, etc.
1872, 53, § 2.
1874, 298; 372,
§ 20.
1878, 236, § 1.
P. S. 112, § 35.
R. L. 111, § 36.
R. L. 109, § 8.
See 1906, 463,
Part II, § 14.

SECTION 3. The agreement of association shall state:—

(a) That the subscribers thereto associate themselves with the intention of forming an electric railroad company.

(b) The corporate name assumed, which shall be one not in use by any other electric railroad company in the Commonwealth, or, in the judgment of the board of railroad commissioners, so similar thereto as to be likely to be mistaken for it, or for any railroad corporation or street railway company in this Commonwealth, and which shall contain the words, "electric railroad company", at the end thereof.

(c) The termini of the railroad.

(d) The length of the railroad, as nearly as may be.

(e) The name of each county, city and town in which the railroad is to be located.

(f) The gauge of the railroad, which shall be four feet eight and one half inches.

(g) The total amount of the capital stock of the company, which shall be not less than ten thousand dollars for each mile.

(h) The par value of the shares, which shall be one hundred dollars.

(i) The names and residences of at least five persons, who shall be subscribers to the agreement of association, to act as directors until others are chosen and qualified in their stead.

Each associate shall subscribe to the agreement of association his name, residence, post office address, and the number of shares of stock which he agrees to take, but no subscriber shall be bound to pay more than ten per cent of the amount of his subscription unless a company is incorporated.

SECTION 4. The directors, before applying to the board of railroad commissioners as hereinafter provided, shall cause a copy of the agreement of association to be published in a newspaper, if there be any, published in each of the cities and towns in which the railroad is to be located, and if, in any county, a newspaper is published in none of said cities and towns therein, in such newspaper published in said county as shall be designated by the board of railroad commissioners, at least once in each of three successive weeks; and the sworn certificate of the clerk shall be conclusive evidence thereof.

Publication of agreement of association.
1872, 53, § 5.
1874, 372, § 22.
P. S. 112, § 37.
R. L. 111, § 38.
See 1906, 463,
Part II, § 16.

SECTION 5. After compliance with the provisions of section one and of the two preceding sections, and within thirty days after the first publication of notice of the agreement of association therein required, the directors therein named shall apply to the board of railroad commissioners for a certificate that public convenience and necessity require the construction of a railroad as proposed in such agreement. With such application said directors shall file a map of the railroad showing the cities and towns through which it will pass, the principal highways, railways, railroads, navigable streams and tide waters to be crossed, and the extent to which the route of the railroad will be fixed upon private land or will be located longitudinally upon public ways and places. They shall also file a general profile of the railroad showing the grades, and shall submit an estimate showing in reasonable detail the cost of construction. The directors shall also furnish such additional maps and information as said board may require. Prior to the decision of said board the directors may change or modify the route in any city or town in whole or in part either at the suggestion of said board or otherwise. If said board refuses to issue such certificate, no further proceedings shall be had, but the application may be renewed after one year from the date of such refusal.

Certificate of public convenience and necessity.
Exigency.
Map, etc.
1882, 265, § 1.
R. L. 111, § 40.
See 1906, 463,
Part II, §§ 17,
18.
205 Mass. 94.

SECTION 6. In case the board of railroad commissioners grants the certificate specified in the preceding section, the directors may, within sixty days after the granting thereof, apply to the board of aldermen of each city and to the selectmen of each town in which the railroad is to be located to fix the route of the railroad in such city or town, and with such application the directors shall file a copy of the maps and general profile,

Proceedings before boards of aldermen or selectmen.
See 1906, 463,
Part II, § 19;
1912, 725,
Part II, § 3,
p. 258.

and, upon request, the other information presented to the board of railroad commissioners. The board of aldermen and the selectmen shall give fourteen days' notice of the time and place for a hearing on such application by publication thereof in one or more newspapers, if there be any, published in said city or town; otherwise in such newspaper or newspapers published in the county in which the city or town is situated as shall be designated by the board of railroad commissioners; and written notice of the time and place at which such hearing will be held shall be mailed at least seven days before said hearing by the clerk of the city or town in which the application for locations has been filed to the owners as determined by the last preceding assessment for taxation of real estate along the public ways or parts of ways upon which it is proposed to construct said line and to the owners of private land upon which the route of the railroad is to be fixed, [The board of aldermen or the selectmen shall set forth in the certificate required by section seven the fact that such notice was mailed as above provided.] *and said clerk shall make and deliver to the directors at the hearing a certificate setting forth the fact that such notice was published and mailed as provided above, and such certificate shall be conclusive evidence thereof.*

[Amended.
1907, 428, § 1.]

Acts of 1907, Chapter 428, § 1.

An Act relative to Electric Railroad Companies.

1906, 516, § 6,
amended.

SECTION 1. Section six of chapter five hundred and sixteen of the acts of the year nineteen hundred and six is hereby amended by striking out at the end thereof the words "The board of aldermen or the selectmen shall set forth in the certificate required by section seven the fact that such notice was mailed as above provided", and inserting in place thereof the words:— and said clerk shall make and deliver to the directors at the hearing a certificate setting forth the fact that such notice was published and mailed as provided above, and such certificate shall be conclusive evidence thereof, — so as to read as follows:— *Section 6.* [For § 6 as amended, see above.]

Fixing the
route.
See 1906, 463.
Part II, §§ 20,
21.
1912, 725.
Part II, § 3,
below.
By aldermen
or selectmen.

SECTION 7. If the route designated in the application is agreed to by the board of aldermen or the selectmen, and all requirements in respect of the part of said route located longitudinally upon public ways and places are assented to by the directors, and thereafter are approved in writing by the board of railroad commissioners, the board of aldermen or the selectmen shall make a certificate setting forth the route as fixed by them, which shall be certified by said board or their clerk to the directors, and no further proceedings shall be necessary, but the route so agreed to shall be the route of said railroad in such city or town, *except as hereinafter provided.* If the board of aldermen or the selectmen agree with the directors upon a route different from that designated in the application, or [if the board of aldermen or the selectmen fail to agree with the directors upon a route, or as to the requirements in respect of

the part of the route located longitudinally upon public ways and places, the directors within ninety days after the date of the filing of the application or within fourteen days after the failure to approve the requirements, may apply to the board of railroad commissioners, which may, in its discretion, after notice to the board of aldermen or the selectmen, and after public notice and a hearing, fix the route of said railroad in such city or such town, which route may be either the route designated in the application, or the route agreed to by the board of aldermen or the selectmen and the directors.] *fail within ninety days after the date of the filing of the application to agree with the directors upon a route, or as to requirements in respect of the part of the route located longitudinally upon public ways and places which meet with the approval of the board of railroad commissioners, the directors or the board of aldermen or selectmen within one hundred days after the date of the filing of the application may apply to the board of railroad commissioners, which may, in its discretion, after notice to the directors and board of aldermen or selectmen, and after public notice and a hearing, fix the route and determine the grades and method of constructing said railroad in such city or in such town, and no change shall thereafter be made by the directors in the grades or method of construction so determined without the approval in writing of the board of railroad commissioners after notice to the board of aldermen or selectmen and after public notice and a hearing.* Said board shall thereupon make a certificate setting forth the route as fixed by it, which route shall be certified by its clerk to the directors. In fixing such route the board of railroad commissioners shall not locate it longitudinally upon any public way or place in such city or town without the consent of the board of aldermen of such city or the selectmen of such town. That part of the route which consists of a location longitudinally upon a public way or place shall not be deemed to be fixed until all requirements which may be imposed in respect of it by the board of aldermen, or the selectmen, as the case may be, are approved in writing by the board of railroad commissioners. *In case the route in any city or town, as fixed either by the board of aldermen or selectmen, or by the board of railroad commissioners, in the manner hereinbefore provided, is different from the route designated in the application of the directors, and in case said change of route in the opinion of the directors makes it desirable to change the route of said railroad in any of the other cities or towns through which the route of said railroad passes, or in case in the opinion of the directors it becomes desirable to change the route of the railroad so as to pass through any cities or towns not named in the agreement of association of said railroad company or to change the route so as no longer to pass through certain cities or towns in which the directors have applied to have the route fixed, then the directors may at any time before the route in all the cities and towns is finally fixed, or within thirty days thereafter, apply to the board of rail-*

By board of
railroad com-
missioners.
[Amended.
1907, 428, § 2;
1908, 450.]

road commissioners for leave to apply again to the board of aldermen or selectmen of any cities or towns to fix a new route other than that originally applied for within such cities or towns, or to apply to the board of aldermen or selectmen of any cities or towns not named in the agreement of association of said railroad company to fix a route of the railroad passing through such cities or towns, or for leave to abandon the route in any cities or towns in which the directors have applied, as aforesaid, to have the route fixed. With such application to the board of railroad commissioners the directors shall file a map and general profile showing the change in the route as proposed, which map and general profile shall be in the same form as those filed under the provisions of section five, and the directors shall also furnish such additional information as the board may require. The board shall give a public hearing upon such application after giving such notice to the directors and to the board of aldermen or selectmen of such cities or towns as it may deem requisite. In case the board authorizes the directors to apply to any cities or towns to fix a route other than that designated in the original application, then all proceedings hitherto taken in regard to fixing the route in such cities or towns shall become null and void, and the directors shall, within sixty days thereafter, again apply to the board of aldermen of such cities and to the selectmen of such towns to fix anew the route of the railroad in such cities or towns, and with such application shall file a copy of the maps and general profile of such proposed altered route, and, upon request, the other information presented to the board of railroad commissioners. The proceedings thereafter upon such application shall be the same as those provided in the case of an original application. And in case the board of railroad commissioners authorizes the directors to apply to any cities or towns not named in said agreement of association to fix a route of the railroad passing through said cities or towns, then the directors shall, within sixty days after the granting of such authority, apply to the board of aldermen or selectmen of such cities or towns to fix the route of the railroad in such cities or towns. Said application shall be made in the same manner and the proceedings thereon shall be the same as in the case of an application to fix the route of the railroad to the board of aldermen or selectmen of a city or town originally named in the agreement of association of such railroad company. In case the board authorizes the directors to abandon entirely the route in any cities or towns in which the directors have applied, as aforesaid, to have the route fixed, then any action taken in regard to fixing the route in such cities or towns shall become null and void, and the railroad company shall be under no obligation to construct its railroad therein. The order of the railroad commissioners authorizing the directors to apply for a route of the railroad in any city or town not named in the agreement of association or the order of railroad commissioners under which the route in any cities or towns is abandoned, shall operate as an amendment to the clauses in said agreement of association which name the cities or towns

in which the railroad is to be located, and the terminal thereof, and a certified copy of said order shall be attached to the agreement of association.

Acts of 1907, Chapter 428, § 2.

SECTION 2. Section seven of said chapter five hundred and sixteen is hereby amended by striking out all after the word "or", in the fourteenth line, down to and including the word "directors", in the twenty-sixth line, and inserting in place thereof the following:— fail within ninety days after the date of the filing of the application to agree with the directors upon a route, or as to requirements in respect of the part of the route located longitudinally upon public ways and places which meet with the approval of the board of railroad commissioners, the directors or the board of aldermen or selectmen within one hundred days after the date of the filing of the application may apply to the board of railroad commissioners, which may, in its discretion, after notice to the directors and board of aldermen or selectmen, and after public notice and a hearing, fix the route and determine the grades and method of constructing said railroad in such city or in such town, and no change shall thereafter be made by the directors in the grades or method of construction so determined without the approval in writing of the board of railroad commissioners after notice to the board of aldermen or selectmen and after public notice and a hearing, — so as to read as follows: — *Section 7. [For § 7 as amended, see above.]*

1906, 516, § 7.
amended.

Acts of 1908, Chapter 450.

An Act relative to Electric Railroad Companies.

Section seven of chapter five hundred and sixteen of the acts of the year nineteen hundred and six, as amended by section two of chapter four hundred and twenty-eight of the acts of the year nineteen hundred and seven, is hereby further amended by inserting after the word "town", in the twelfth line, the words:— except as hereinafter provided, — and by adding at the end of said section the words:— In case the route in any city or town, as fixed either by the board of aldermen or selectmen, or by the board of railroad commissioners, in the manner hereinbefore provided, is different from the route designated in the application of the directors, and in case said change of route in the opinion of the directors makes it desirable to change the route of said railroad in any of the other cities or towns through which the route of said railroad passes, or in case in the opinion of the directors it becomes desirable to change the route of the railroad so as to pass through any cities or towns not named in the agreement of association of said railroad company or to change the route so as no longer to pass through certain cities or towns in which the directors have applied to have the route fixed, then the directors may at any time before the route in all the cities and towns is finally fixed, or within thirty days thereafter, apply to the board of railroad commissioners for leave to apply again to the board of aldermen or selectmen of any cities or towns to fix a new route other than that originally applied for within such cities or towns, or to apply to the board of aldermen or selectmen of any cities or towns not named in the agreement of association of said railroad company to fix a route of the railroad passing through such cities or towns, or for leave to abandon the route in any cities or towns in which the directors have applied, as aforesaid, to have the route fixed. With such application to the board of railroad commissioners the directors shall file a map and general profile showing the change in the

1906, 516, § 7,
and 1907, 428,
§ 2, amended.

route as proposed, which map and general profile shall be in the same form as those filed under the provisions of section five, and the directors shall also furnish such additional information as the board may require. The board shall give a public hearing upon such application after giving such notice to the directors and to the board of aldermen or selectmen of such cities or towns as it may deem requisite. In case the board authorizes the directors to apply to any cities or towns to fix a route other than that designated in the original application, then all proceedings hitherto taken in regard to fixing the route in such cities or towns shall become null and void, and the directors shall, within sixty days thereafter, again apply to the board of aldermen of such cities and to the selectmen of such towns to fix anew the route of the railroad in such cities or towns, and with such application shall file a copy of the maps and general profile of such proposed altered route, and, upon request, the other information presented to the board of railroad commissioners. The proceedings thereafter upon such application shall be the same as those provided in the case of an original application. And in case the board of railroad commissioners authorizes the directors to apply to any cities or towns not named in said agreement of association to fix a route of the railroad passing through said cities or towns, then the directors shall, within sixty days after the granting of such authority, apply to the board of aldermen or selectmen of such cities or towns to fix the route of the railroad in such cities or towns. Said application shall be made in the same manner and the proceedings thereon shall be the same as in the case of an application to fix the route of the railroad to the board of aldermen or selectmen of a city or town originally named in the agreement of association of such railroad company. In case the board authorizes the directors to abandon entirely the route in any cities or towns in which the directors have applied, as aforesaid, to have the route fixed, then any action taken in regard to fixing the route in such cities or towns shall become null and void, and the railroad company shall be under no obligation to construct its railroad therein. The order of the railroad commissioners authorizing the directors to apply for a route of the railroad in any city or town not named in the agreement of association or the order of railroad commissioners under which the route in any cities or towns is abandoned, shall operate as an amendment to the clauses in said agreement of association which name the cities or towns in which the railroad is to be located, and the terminal thereof, and a certified copy of said order shall be attached to the agreement of association, — so as to read as follows: — *Section 7. [For § 7 as amended, see above.]*

Part of 1912, Chapter 725, Part II, § 3.

. . . *Provided, however,* that the foregoing provisions relating to fixing the route by the boards of aldermen and by the selectmen or by the railroad commissioners shall not apply to an electric railroad company, the route of whose railroad has been previously fixed by the boards of aldermen and by the selectmen or by the railroad commissioners under chapter five hundred and sixteen of the acts of the year nineteen hundred and six and acts in amendment thereof and in addition thereto.

Location in
public way
or place.
See 1906, 463,
Part III, § 7.

SECTION 8. If the board of aldermen or the selectmen are of opinion that public convenience and necessity require the railroad to be constructed in part longitudinally upon a public way or place, they may, in granting or agreeing to a location upon such public way or place, prescribe how the tracks shall

be laid, and the kind of wires, poles, rails and other appliances which shall be used, and may impose such terms, conditions and obligations incidental to and not inconsistent with the objects of a street railway company as the public interests may in their judgment require, and the board of railroad commissioners may approve.

Acts of 1910, Chapter 587.

An Act limiting the Time of Construction of the Railroads of Electric Railroad Companies.

SECTION 1. If an electric railroad company, incorporated under chapter five hundred and sixteen of the acts of the year nineteen hundred and six, does not begin the construction of its railroad and expend thereon at least ten per cent of the amount of its original capital stock within two years after the date of its certificate of incorporation, and does not complete and open its railroad for use within four years after said date, its corporate powers and existence shall cease, unless the board of railroad commissioners, after public notice and a hearing, shall extend said time by a certificate, stating that in its judgment due diligence has been exercised by the corporation, and that public necessity and convenience require such extension.

Time of construction of the railroads of electric railroad companies limited, etc.

SECTION 2. If an electric railroad company, incorporated under said chapter five hundred and sixteen, does not complete and open for use an extension within four years after the date of the authorization of the extension by the board of railroad commissioners, the power of the company to construct and operate the same shall cease, unless the said board, after public notice and a hearing, shall extend said time by a certificate stating that in its judgment due diligence has been exercised by the corporation, and that public necessity and convenience require the said extension of time.

— of completing and opening for use of an extension limited, etc.

SECTION 3. This act shall not apply to the form of railroad known as the Boynton Bicycle Railroad nor to the Boston, Quincy and Fall River Bicycle Railway Company which was incorporated by chapter five hundred and twenty-seven of the acts of the year eighteen hundred and ninety-seven, and to which corporation, by subsequent acts, an extension of time for the building of its railway has been granted.

Not to apply to a certain railroad.

SECTION 4. This act shall take effect upon its passage. [Approved June 3, 1910.]

SECTION 9. The certificate of incorporation issued by the secretary of the commonwealth to the company shall contain the words, "electric railroad companies", instead of the words, "railroad corporations."

Certificate of incorporation. See 1906, 463, Part II, §§ 23, 24.

SECTION 10. An electric railroad company shall act as a common carrier of baggage, express matter and freight in such cases, upon such parts of its railroad, and to such extent, in any city or town as, after public notice and a hearing upon the petition of the president or a majority of the directors of the company or any interested party, the board of aldermen or the selectmen, or those exercising the powers of such board or of selectmen, in such city or town, shall by order approve: *provided, however,* that a company shall actually engage in the business of a common carrier under authority of this act only

Carriers of baggage and freight. See 1906, 463, Part III, § 41.

in such of the cases, upon such of the parts of its railroad, and to so much of the extent, approved as aforesaid, as the board of railroad commissioners shall certify, after public notice and a hearing upon the petition of the president or a majority of the directors of the company or any interested party, that public necessity and convenience require; and *provided, further*, that any company acting under authority hereof shall be subject to such regulations and restrictions as may from time to time be made by the local authorities aforesaid, with the approval of the board of railroad commissioners, and shall also be subject to the provisions of all laws now or hereafter in force relating to common carriers so far as they shall be consistent herewith and with said regulations and restrictions.

Sections of street railway law applicable.

Recreation grounds.

Purchase of electricity by, etc.
See also 1906, 218.

Stock and bonds.
Locations on highways.
205 Mass. 96.

Operation.

Crossings of steam railroads.

Remedies; procedure before state boards.

Sections of steam railroad law not applicable.

Tracks in public ways, — liability.

Grain elevators.
Stock or bonds of other, etc.

SECTION 11. An electric railroad company shall be subject to the following provisions of law relative to street railway companies contained in Part III of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six: section thirty-four of said chapter, relative to the acquisition of recreation grounds; sections fifty-nine to sixty-three, inclusive, of said chapter, relative to the purchase of electricity by cities and towns; and section one hundred and three of said chapter, relative to the increase of capital stock and issue of bonds. If the railroad, or any extension thereof, is to be located in part longitudinally upon public ways and places, such company shall, upon that part of its route, also be subject to the following provisions of law relative to street railway companies: sections thirty-two, sixty-seven to seventy-two, inclusive, of said chapter, relative to locations; section sixty-four of said chapter, relative to extension of locations; section sixty-five of said chapter, relative to alteration of locations; section sixty-six of said chapter, relative to revocation of locations; sections seventy-three to eighty-one, inclusive, of said chapter, relative to construction, use or discontinuance of tracks; sections thirty-six, thirty-seven, thirty-eight, eighty-two to ninety-five, inclusive, of said chapter, relative to operation; sections one hundred and thirteen to one hundred and sixteen, inclusive, of said chapter, relative to crossings of steam railroads; sections one hundred and fifty-five to one hundred and fifty-seven, inclusive, of said chapter, relative to remedies and procedure before state boards.

SECTION 12. An electric railroad company shall not be subject to the following provisions of law relative to railroad corporations contained in Part II of said chapter four hundred and sixty-three: so much of section twenty-two of said chapter as refers to tracks laid longitudinally within the limits of a public way; so much of section forty-six of said chapter as applies to grain elevators; sections fifty-eight, fifty-nine and sixty of said chapter, relative to stock or bonds of other corporations; sections one hundred and forty-seven, one hundred and fifty-six, one hundred and seventy-three to one hundred and seventy-

six, inclusive, and two hundred and [forty-one,] *forty* of said chapter relative to operation; section one hundred and fifty-five of said chapter relative to the obstruction of highways; and so much of section two hundred and [forty-three] *forty-two* of said chapter as applies to locations longitudinally within the limits of a public way; but the board of railroad commissioners shall prescribe rules and regulations relative to the equipment of cars, the ringing of bells, the sounding of whistles and the giving of signals, for the prevention of accidents.

Operation.

Liability to town, etc., for accidents. [Amended, 1907, 428, § 3.]

Powers of railroad commissioners.

Acts of 1907, Chapter 428, § 3.

SECTION 3. Section twelve of said chapter five hundred and sixteen is hereby amended by striking out the word "forty-one", in the twelfth line, and inserting in place thereof the word:— forty, — and by striking out the word "forty-three", in the fifteenth line, and inserting in place thereof the word:— forty-two, — so as to read as follows:— *Section 12.* [For § 12 as amended, see above.]

1906, 516, § 12, amended.

SECTION 13. Section two hundred and [thirty-three] *thirty-two* of Part II of said chapter four hundred and sixty-three shall apply to an electric railroad company, with the addition, after the word "track", in the second line thereof, of the words "not within the limits of a highway"; and section sixty-three of Part I of said chapter shall apply to such company, with the addition, after the word "upon", in the fourteenth line thereof, of the words "that part of", and after the word "railroad", in the fourteenth and fifteenth lines thereof, of the words "not within the limits of a highway."

Sections of steam railroad law applicable, with modifications.

Walking on track.

Penalty for loss of life through negligence, etc.

[Amended, 1907, 428, § 4.]

Acts of 1907 Chapter 428, § 4.

SECTION 4. Section thirteen of said chapter five hundred and sixteen is hereby amended by striking out the word "thirty-three", in the first line, and inserting in place thereof the word:— thirty-two, — so as to read as follows:— *Section 13.* Section two hundred and thirty-two of Part II of said chapter four hundred and sixty-three shall apply to an electric railroad company, with the addition, after the word "track", in the second line thereof, of the words "not within the limits of a highway"; and section sixty-three of Part I of said chapter shall apply to such company, with the addition, after the word "upon", in the fourteenth line thereof, of the words "that part of", and after the word "railroad", in the fourteenth and fifteenth lines thereof, of the words "not within the limits of a highway."

1906, 516, § 13, amended.

Certain provisions of law to apply, etc.

SECTION 5. This act shall apply to all pending proceedings under said chapter five hundred and sixteen.

To apply to pending proceedings.

SECTION 6. This act shall take effect upon its passage. [Approved May 17, 1907.]

TAXATION.

A. Corporate Franchise Tax.

SECTION 14. Every electric railroad company organized under the general laws of the commonwealth, in addition to all returns required by its charter, shall annually, between the first

Annual returns to tax commissioner. 1864, 208, §§ 2, 3.

1865, 283, § 3.
 1880, 117, § 2.
 P. S. 13, § 38.
 1885, 238, § 1.
 1886, 270.
 1888, 413, § 24.
 1898, 417; 578,
 § 2.
 R. L. 14, § 37.
 12 Allen, 75.
 98 Mass. 25.
 139 Mass. 561.
 144 Mass. 598.
 146 Mass. 408.
 157 Mass. 70.
 [1 Op. A. G.
 278.]
*See 1909, 440,
 § 2, for amend-
 ment to §§ 14,
 15, 20.*

and tenth days of [May] *April*, return to the tax commissioner, under the oath of its treasurer, a complete list of its shareholders, their residences, the number of shares belonging to each, the amount of the capital stock of the company, its place of business and the par value and market value of the shares made up as of said first day of [May] *April*. If stock is held as collateral security, such return shall state the name and residence of the pledgor and of the pledgee. It shall also contain a statement in detail of the works, structures, real estate and machinery owned by said company and subject to local taxation within the commonwealth, and of the location and value thereof. Such company shall also state in its return the whole length of its line, and so much of the length of its line as is without the commonwealth, and so much as is constructed on private land; also the length of track operated by the electric railroad company in each city and town on the thirtieth day of September preceding the return, to be determined by measuring as single track the total length of all tracks operated by it, including sidings and turn-outs, whether owned or leased by it or over which it has trackage rights only; and the amount of dividends paid on its capital stock during the year ending on such preceding thirtieth day of September and during each year from the organization of the company.

Valuation of
 corporate
 franchise, etc.
 Deductions.
 1864, 208,
 §§ 5, 6.
 1865, 283,
 §§ 4, 5.
 1880, 117, § 2.
 P. S. 13, §§ 39,
 40.
 1885, 238, § 1.
 1886, 270.
 1898, 417.
 R. L. 14, § 38.
 13 Allen, 391.
 98 Mass. 19, 25.
 100 Mass. 184,
 399.
 125 Mass. 568.
 137 Mass. 80.
 139 Mass. 561.
 144 Mass. 598.
 146 Mass. 408.
 152 Mass. 372.
 157 Mass. 70.
 167 Mass. 522.
 163 U. S. 1.

SECTION 15. The tax commissioner shall ascertain from the returns or otherwise the true market value of the shares of each electric railroad company, and shall estimate therefrom the fair cash value of all of said shares constituting its capital stock on the preceding first day of [May] *April*, which, unless by the charter of the company a different method of ascertaining such value is provided, shall, for the purposes of this act, be taken as the true value of its corporate franchise. From such value there shall be deducted so much of the value of its capital stock as is proportional to the length of that part of its line, if any, lying without the commonwealth; and also the value of its real estate with machinery subject to local taxation within the commonwealth.

For the purposes of this section, the tax commissioner may take the value at which such real estate and machinery are assessed at the place where they are situated as the true value, but such local assessment shall not be conclusive of the true value thereof.

Corporation
 to appeal from
 local valuation,
 when.
 1865, 283, § 6.
 P. S. 13, § 41.
 1890, 127, § 7.
 1898, 417.
 R. L. 14, § 39.

SECTION 16. The tax commissioner may require the company to prosecute an appeal from the valuation of its real estate or machinery by the assessors of a city or town, either to the county commissioners or to the superior court, whose decision shall be conclusive upon the question of value. Upon such appeal the tax commissioner may be heard, and in the superior court costs may be awarded as justice requires.

Tax to be paid
 on corporate
 franchise.

SECTION 17. Every electric railroad company subject to the provisions of section fourteen shall annually pay a tax upon its

corporate franchise, after making the deductions provided for in section fifteen, at a rate equal to the average of the annual rates for the three years preceding the year in which the assessment is laid, the annual rate to be determined by an apportionment of the whole amount of money to be raised by taxation upon property in the commonwealth during the same year as returned by the assessors of the several cities and towns under the provisions of section ninety-three of chapter twelve of the Revised Laws, and amendments thereof, upon the aggregate valuation of all cities and towns for the preceding year as returned under sections sixty and sixty-one of said chapter and amendments thereof; but if the return from any city or town is not received [prior to the twentieth day of] on or before the first Monday of August, the amount raised by taxation in such city or town for the preceding year, as certified to the [secretary of the commonwealth] tax commissioner may be adopted for the purpose of this determination. The amount of tax assessed upon polls for the preceding year, as certified to [said secretary,] the tax commissioner may be taken as the amount of poll tax to be deducted from the whole amount to be raised by taxation, in ascertaining the amount to be raised upon property.

Rate, how determined.
 1864, 208, § 5.
 1865, 283, § 5.
 1880, 117, § 2.
 P. S. 13, § 40.
 1885, 238, § 1.
 1886, 270.
 1888, 413, § 24.
 1898, 417.
 R. L. 14, § 40.
 12 Allen, 75, 298.
 98 Mass. 19, 25.
 99 Mass. 146, 151.
 105 Mass. 527.
 135 Mass. 569.
 137 Mass. 80.
 139 Mass. 561.
 146 Mass. 408.
 157 Mass. 70.
 167 Mass. 522.
 6 Wallace, 632.
 178 U. S. 120.
 Amended by 1909, 513, § 3, as indicated.

B. Additional Corporate Franchise Tax.

SECTION 18. If an operating electric railroad company, including a company whose lines are located partly within and partly without the limits of the commonwealth, has paid during the year ending on the thirtieth day of September preceding the date of the return required by section fourteen dividends exceeding in the aggregate eight per cent upon its capital stock, it shall for every such year in addition to the tax required by the preceding section pay a tax equal to the amount of such excess to be determined as therein provided by the tax commissioner; but such additional tax shall not be imposed, if, from the date when the company began to operate its railroad, it has not paid dividends equivalent in the aggregate to at least six per cent per annum upon its capital stock from year to year.

Additional tax on electric railroad companies.
 1898, 417; 578, § 3.
 R. L. 14, § 41.
 See 1909, 490, Part III, §§ 39-51.

SECTION 19. If the value of the real estate and machinery of an electric railroad company subject to local taxation within the commonwealth, as determined by the tax commissioner, is less than the value thereof as determined by the assessors of the place where the same are situated, he shall give notice of his determination to such company; and, unless within one month after the date of such notice it applies to said assessors for an abatement, and, upon their refusal to grant an abatement, prosecutes an appeal under the provisions of section seventy-seven of chapter twelve of the Revised Laws, giving notice thereof to the tax commissioner, the valuation of said commissioner shall be conclusive upon said company.

Remedy of corporation when assessors' valuation of real estate exceeds tax commissioner's.
 1865, 283, § 6.
 P. S. 13, § 41.
 1898, 417.
 R. L. 14, § 42.
 137 Mass. 81.
 146 Mass. 408.
 152 Mass. 384.
 167 Mass. 522.

C. Exemption and Apportionment.

Exemption from local taxation. Apportionment.
 1864, 208, §§ 8, 15.
 1865, 283, § 15.
 1866, 291, § 2.
 P. S. 13, § 57.
 1887, 228.
 1888, 413, § 23.
 1898, 417; 578, §§ 4, 26.
 1900, 413, § 5.
 1901, 413, § 4.
 R. L. 14, § 61.
 135 Mass. 569.
 139 Mass. 559.

Amended, 1909, 440, § 2.

SECTION 20. No taxes shall be assessed in a city or town for state, county or town purposes upon the shares in the capital stock of an electric railroad company for any year for which it pays to the treasurer and receiver general a tax on its corporate franchise. Such proportion of the tax collected of each electric railroad company under the provisions of sections seventeen and eighteen as corresponds to the proportion of its line constructed on private land, shall be distributed, credited and paid, in the ratio of the amount of its stock owned by persons residing in this commonwealth, to the several cities and towns in which, from the returns or other evidence, it appears that such persons resided on the preceding first day of [May] April, according to the number of shares so held in such cities and towns respectively. If stock is held by co-partners, guardians, executors, administrators or trustees, the proportion of tax corresponding to the amount of stock so held shall be credited and paid to the cities and towns where the stock would have been taxed under the provisions of clauses four, five, six and seven of section twenty-three and of section twenty-seven of chapter twelve of the Revised Laws. Such proportion of the tax collected from any such electric railroad company under the provisions of sections seventeen and eighteen as corresponds to the proportion of its line located longitudinally upon public ways and places, shall be distributed, credited and paid to the several cities and towns in proportion to the length of tracks operated by such company in such cities and towns respectively. The share of the tax paid by an electric railroad company in respect of its tracks upon locations granted by the board of metropolitan park commissioners or by the Wachusett mountain state reservation commission shall be apportioned to the commonwealth and shall be credited by the treasurer and receiver general to the sinking fund of the loan to which the expenditure for the road, boulevard, park or reservation on which the tracks are located was charged.

Tax commissioner to determine amounts due to cities and towns.
 1865, 283, § 15.
 P. S. 13, § 58.
 1898, 578, §§ 4, 5.
 R. L. 14, § 62.

SECTION 21. The tax commissioner shall, subject to appeal to the board of appeal, ascertain and determine the amount due to each city and town under the provisions of the preceding section, notify the treasurer of each city and town thereof, and certify the amount as finally determined, to the treasurer and receiver general, who shall thereupon pay over the same.

D. Commutation Tax.

Returns of electric railroad companies to assessors.
 1898, 417; 578, § 6.
 R. L. 14, § 43.

SECTION 22. An electric railroad company, including a company whose lines are located partly within and partly without the limits of the commonwealth, shall annually, on or before the fifteenth day of October, make and file in the office of the board of assessors of every city and town in which any part of

the railroad operated by it is situated a return signed and sworn to by its president and treasurer, stating the length of track operated by it longitudinally upon public ways and places in such city or town, and also the total length of track operated by it, determined as provided in section fourteen, and also the amount of its gross receipts during the year ending on the preceding thirtieth day of September, including therein all amounts received by it from the operation of its railroad, but excluding income derived from sale of power, rental of tracks or other sources.

SECTION 23. On or before the first day of November annually, the assessors of every city and town in which an electric railroad is operated, including a company whose lines are located partly within and partly without the limits of the commonwealth, shall assess on every company described in the preceding section operating a railroad therein an excise tax of an amount equal to such proportion of the following percentages of the gross receipts of such company as the length of tracks operated by it longitudinally upon the public ways and places of such city or town bears to the total length of tracks operated by it.

Excise tax.
1898, 417; 578,
§ 7.
R. L. 14, § 44.

The percentages shall be based upon the annual gross receipts for each mile of track as follows and computed upon the aggregate of such annual gross receipts: four thousand dollars or less, one per cent; more than four thousand dollars and less than seven thousand, two per cent; more than seven thousand dollars and less than fourteen thousand, two and one quarter per cent; more than fourteen thousand dollars and less than twenty-one thousand, two and one half per cent; more than twenty-one thousand dollars and less than twenty-eight thousand, two and three quarters per cent; twenty-eight thousand dollars or more, three per cent.

The excise tax provided for by this section shall be in addition to the taxes otherwise provided by law.

SECTION 24. The aldermen of a city, the selectmen of a town or an electric railroad company operating in such city or town may petition the board of railroad commissioners for a revision of the amount of excise tax to be paid by a company under the provisions of the preceding section. Said board shall, upon such petition, after public notice and a hearing at which the aldermen or selectmen and the company may submit evidence, determine the average annual cost to such city or town of the work done by it during the preceding three years under the provisions of said chapter four hundred and sixty-three, which a street railway company was not by law required to do prior to the first day of October in the year eighteen hundred and ninety-eight, and also the average annual payments made by said company to said city or town under and pursuant to the provisions of the preceding section during said three years; and having determined said average annual cost

Revision of
tax.
1898, 578, § 8.
R. L. 14, § 45.

and average annual payments, said board shall fix and determine the proportion of a percentage of the gross receipts which shall be paid as an excise tax under the provisions of said section by the company to said city or town annually thereafter, such percentage to be fixed at such a rate as will be necessary to yield to the city or town annually thereafter an amount equal to the average annual cost to the city or town determined as aforesaid; and the percentage so fixed shall not again be changed for the period of three years and then only in the manner herein provided. Said board may at any time upon petition therefor by a city or town entitled to a part of the excise tax paid by an electric railroad company, after such notice as the board may order to all other cities and towns entitled to share in the excise tax paid by said company, and after a hearing, determine as to the distribution thereof among the several cities and towns in which such company operated any part of its railroad, and fix the proportions thereof to which they shall respectively be entitled, which shall thereafter be the proportions of said excise tax to be assessed upon said company, instead of the proportion based upon length of tracks as hereinbefore provided.

Notice to tax collector of amount of excise tax. 1898, 578, § 9. R. L. 14, § 46.

SECTION 25. Prior to the fifteenth day of November in each year the assessors of every city and town shall notify the collector of taxes thereof of the amount of excise tax assessed therein under the provisions of section twenty-three, and the collector shall forthwith notify the treasurer of every electric railroad company of the amount of excise tax so assessed upon it, which shall become due and payable within thirty days after the receipt of such notice. The provisions of chapter thirteen of the Revised Laws, so far as they may be appropriate, shall apply to the collection of the said excise tax.

E. Application of Taxes.

Application of taxes. 1898, 578, § 10. R. L. 14, § 47.

SECTION 26. All taxes which are collected from an electric railroad company and paid to cities and towns under the provisions of the preceding section and of section twenty-one shall be applied toward the construction, repair and maintenance of the public ways and places in which the tracks of such company are located, and to the removal of snow from such public ways and places within such cities and towns.

INTERESTED PARTIES.

Interested parties.

SECTION 27. In any proceeding under this act before the board of railroad commissioners, the mayor and aldermen of any city or the selectmen of any town, any person whose land is to be taken or whose estate abuts upon any highway through which the electric railroad is to pass, and any railroad corporation or street railway company which has a location in any city

or town included within the proposed route of the electric railroad company, shall be considered an interested party. [Approved June 22, 1906.]

F.

Section 28. *The location, construction, maintenance, or operation of said lines of railroad in so far as the same are located longitudinally upon an elevated structure upon a public way or place shall be deemed an additional servitude, and shall entitle lessees, mortgagees and other parties having an estate in such public ways or places, or in premises which abut thereon, and who are damaged by reason of the location, construction, maintenance and operation of said lines of railroad, to recover reasonable compensation in the manner herein provided. Any such person may, at any time within three years after the construction of such railroad longitudinally upon a public way or place, file in the clerk's office of the superior court for the county where the said premises lie, a petition setting forth his claim against the corporation owning or operating the same, and the amount thereof. He shall give to said corporation fourteen days' notice of the filing of such petition, and answer thereto shall be filed by said corporation within thirty days after the return day of such notice.*

Location, construction, etc., of certain lines of railroad to be deemed an additional servitude, etc.

Section 29. *The said petition shall be heard before a jury, if either party claims that right at the time of the filing of the petition, or within ten days after the filing of the answer thereto; otherwise, the same shall be heard before the court without a jury. The finding shall be on the following questions, to wit: First, Has the petitioner's estate been damaged more than it has been benefited or improved in value by reason of the location, construction, maintenance or operation of such railroad? Second, If so, how much? If the answer to the first question shall be "No", a verdict shall be rendered for the corporation; otherwise, a verdict shall be rendered for the petitioner for the amount found in answer to the second question, including interest from the day of the filing of the petition.*

Petition to be heard before a jury in certain cases, etc.

Acts of 1907, Chapter 448.

An Act relative to Recovery of Damages by Abutters on Locations of Electric Railroads.

SECTION 1. Chapter five hundred and sixteen of the acts of the year nineteen hundred and six is hereby amended by adding the following sections at the end of said chapter, under the heading F. [For new §§ 28 and 29, see above.]

Acts of 1907, Chapter 556, § 1.

An Act to extend the Provisions of Law relative to Electric Railroad Companies to the Form of Railway known as the Boynton Bicycle Railway.

SECTION 1. The provisions of chapter five hundred and sixteen of the acts of the year nineteen hundred and six and all acts in addition thereto and in amendment thereof shall, so far as they are applicable, apply to the construction, operation and maintenance of the form of railway known as the "Boynton Bicycle Railway."

TELEPHONE AND TELEGRAPH LAWS.

CHAPTER 433 OF THE ACTS OF 1906.

AN ACT RELATIVE TO THE SUPERVISION BY THE MASSACHUSETTS HIGHWAY COMMISSION OF ALL COMPANIES ENGAGED IN THE TRANSMISSION OF INTELLIGENCE BY ELECTRICITY.

The [Massachusetts highway] public service commission to have supervision of companies transmitting intelligence by electricity, etc. Amended, 1913, 784, § 3. See below.

SECTION 1. The [Massachusetts highway] *public service* commission shall have general supervision of all companies engaged in the transmission of intelligence by electricity within this commonwealth, and shall make all necessary examinations and inquiries and keep themselves informed as to the compliance of all such companies with the provisions of law. None of said commissioners shall be in the employ of or own any stock in any company engaged in the transmission of intelligence by electricity in this commonwealth, or be in any way, directly or indirectly, pecuniarily interested in the manufacture or sale of any article or commodity used by such companies, or for any purpose connected with the business of transmission of intelligence by electricity, nor shall he be connected with, or in the employ of any person, partnership, association or corporation which finances any such company. Each member of said commission shall receive from the commonwealth annually fifteen hundred dollars in addition to the compensation now provided by law.

Compensation.

Revised Laws, Chapter 109, §§ 24, 27.

ISSUE OF STOCK AND BONDS.

Issue of capital stock. 1875, 161. P. S. 110, § 7. 1894, 450, § 1; 452, § 1; 462, § 1. 1897, 337, § 1. [1 Op. A. G. 659.] 179 Mass. 15. 180 Mass. 325. 199 Mass. 352. [2 Op. A. G. 58.] 1902, 441. 1903, 437, § 95. 1906, 463, Part II, § 258; Part III, § 158. See 1903, 437, § 1; 1906, 463, Part II, § 65; Part III, § 107. Amended. See 1913, 784, § 3. See below.

SECTION 24. Railroad corporations and street railway companies shall issue only such amounts of stock and bonds, coupon notes and other evidences of indebtedness payable at periods of more than twelve months after the date thereof, and gas and electric light companies, corporations established for and engaged in the business of transmitting intelligence by electricity, aqueduct and water companies, shall issue only such amount of stock and bonds, as the board of railroad commissioners in the case of railroad corporations or street railway companies, the board of gas and electric light commissioners in the case of gas or electric light companies, may from time to time vote, or the commissioner of corporations in the case of the other corporations hereinbefore specified may from time to time determine, is reasonably necessary for the purpose for which such issue of stock or bonds has been authorized. Said boards or commissioner shall render a decision upon an application for such issue within thirty days after the final hearing thereon. Such decision shall be in writing, shall assign the reasons therefor, shall, if authorizing such issue, specify the respective amounts of stock or bonds, or of coupon notes or other

evidences of indebtedness as aforesaid, which are authorized to be issued for the respective purposes to which the proceeds thereof are to be applied, shall, within seven days after it has been rendered, be filed in the office of the board or commissioner rendering it and a certificate of the vote of the board or of the decision of the commissioner shall, within three days after such decision has been rendered and before the stock or bonds or coupon notes or other evidences of indebtedness as aforesaid are issued, be filed in the office of the secretary of the commonwealth, and a duplicate thereof delivered to the corporation which shall enter the same upon its records. A company which is within the provisions of this section shall not apply the proceeds of such stock or bonds or coupon notes or other evidences of indebtedness as aforesaid to any purpose not specified in such certificate. The provisions of this section shall not require the approval of the board of railroad commissioners to the issue by any railroad corporation of capital stock or bonds, or of coupon notes or other evidences of indebtedness as aforesaid, duly authorized by law of this commonwealth, the proceeds of which are to be expended in another state or country or which are to pay for borrowed money expended in another state or country.

SECTION 27. The supreme judicial court or the superior court shall have jurisdiction in equity, upon the application of the board of railroad commissioners, the board of gas and electric light commissioners, the commissioner of corporations, respectively, of the attorney general, of any stockholder or of any interested party, to enforce the provisions of the three preceding sections and all lawful orders and decisions, conditions or requirements of said boards or commissioner made in pursuance thereof.

Enforcement of statutes.
1894, 450, § 3;
452, § 3; 462, § 3.
1896, 473.
1903, 437, § 95.
1906, 463, Part II, § 258.
Part III, § 153.

See 1903, 437, § 1; 1906, 463, Part II, §§ 67, 68; Part III, §§ 109, 110.
Amended, 1913, 784, § 3. See below.

Acts of 1913, Chapter 784, § 3.

SECTION 3. Sections twenty-four and twenty-seven of chapter one hundred and nine of the Revised Laws are hereby amended by substituting for the words "commissioner of corporations", and for any other word or words intended to designate said commissioner of corporations in each of said sections, whenever any jurisdiction is conferred with respect to corporations established for and engaged in the business of transmitting intelligence by electricity, the words: — public service commission. Chapter four hundred and thirty-three of the acts of the year nineteen hundred and six is hereby amended by substituting in place of the words "Massachusetts highway commission", and any other word or words intended to designate the Massachusetts highway commission wherever used in said act, the words: — public service commission, — and said act is further amended by repealing section three thereof. Nothing in this act shall affect the compensation at present paid to the members of the Massachusetts highway commission.

R. L. 109, §§ 24, 27 amended.

1906, 433 amended; § 3 repealed.

SECTION 2. Said commission may expend in the performance of its duties under this act for necessary statistics, books, stationery, clerical, travelling and incidental expenses, a sum not exceeding six thousand dollars annually.

Expenses.

[SECTION 3. All sums of money annually appropriated for the additional salaries and expenses of the Massachusetts highway commission required by this act shall be apportioned by the tax commissioner among the several companies engaged in the business of the transmission of intelligence by electricity within the commonwealth; and on or before the first day of

Amount of expenses to be apportioned by the tax commissioner, etc.
Repealed.
1913, 784, § 3.
See above.

July in each year he shall assess upon each of said companies its share of such sums in proportion to its gross earnings in this commonwealth for the year last preceding the year in which the assessment is made; and such assessment shall be collected in the same manner as taxes upon corporations.]

Annual report.

SECTION 4. Said commission shall annually, on or before the first Wednesday in January, transmit to the secretary of the commonwealth a report to the general court of all proceedings under the provisions of this act during the period covered by the report, together with such suggestions as to the condition or conduct of companies engaged in the transmission of intelligence by electricity as the said commission may deem expedient.

Hearing to be given on complaint relative to service, etc.

SECTION 5. Upon complaint in writing relative to the service or charges for service in, to or from any city or town in the commonwealth as rendered or made by any company engaged therein in the transmission of intelligence by electricity, signed by the mayor of the city or the selectmen of the town, or by twenty customers of the company, the commission shall notify the company by leaving at its office or place of business in such city or town a copy of the complaint, and shall thereupon, after notice, give a public hearing to the complainant or complainants and to the company, and after the hearing may make such recommendations concerning the reduction, modification or continuation of such charges for service, or concerning improvements in the quality of the service, or concerning such other matters in the premises as the commission shall deem just and proper. Any such recommendations shall be transmitted in writing by the commission to the company complained of, and a report of the proceedings and of the result thereof shall be included in the annual report of the commission, together with a statement of the action, if any, which the company has taken on the recommendation.

Acts of 1913, Chapter 784, § 26.

Orders of commission, service of.

SECTION 26. Every order of the commission shall be served upon every person or corporation to be affected thereby, either by personal delivery of a certified copy thereof, or by mailing a certified copy thereof, in a sealed package with postage prepaid, to the person to be affected thereby or, in the case of a corporation, to any officer or agent thereof upon whom a summons may be served under the laws of this commonwealth. It shall be the duty of every person and corporation to notify the commission forthwith, in writing, of the receipt of the certified copy of every order so served, and in the case of a corporation such notification shall be signed and acknowledged by a person or officer duly authorized by the corporation to admit such service. Within a time specified in the order of the commission every person and corporation upon whom it is served shall, if so required in the order, notify the commission in like manner whether the terms of the order are accepted and will be obeyed. Every order of the commission shall take effect at a time therein specified and shall continue in force either for a period which may be designated therein or until changed or abrogated by the commission.

SECTION 6. If a company engaged in the transmission of intelligence by electricity violates or neglects in any respect to comply with the provisions of any law, said commission shall give due notice thereof in writing to such company and to the attorney-general, who shall take such proceedings thereon as he may deem expedient.

The attorney-general to take proceedings in certain cases, etc.

SECTION 7. The supreme judicial court or the superior court shall have jurisdiction in equity, upon the application of said commission, to enforce all lawful orders of the commission and all provisions of law herein contained.

Supreme judicial court to have jurisdiction.

SECTION 8. Every company engaged in the business of the transmission of intelligence by electricity within the commonwealth shall annually, on or before the first day of October in each year after the year nineteen hundred and six, submit to said commission a report of its doings for the year ending on such date or dates preceding as said commission may designate, which report shall be in such form and detail as the commission may from time to time prescribe, and shall be called the "Annual Return." Such return shall be sworn to by the treasurer and by the chief accounting officer of such company, and shall include a statement of its business, receipts and expenditures within the commonwealth during the year, its dividends paid out and declared, the amount of its authorized capital and its indebtedness and financial condition, on such date or dates as said commission may designate.

Annual returns to be made, etc. [See Op. A. G. Oct. 25, 1907, An. Rep. p. 54.]

SECTION 9. Any company engaged in the business of the transmission of intelligence by electricity within the commonwealth neglecting to make the annual return required by the preceding sections shall, for the first fifteen days or portion thereof during which such neglect continues, forfeit five dollars a day; for the second fifteen days or any portion thereof, ten dollars a day; and for each day thereafter a sum not exceeding fifteen dollars a day. If any company unreasonably refuses or neglects to make such return, it shall, in addition thereto, forfeit not more than five hundred dollars for each offence. All forfeitures recovered under the provisions of this act shall be paid into the treasury of the commonwealth.

Penalty for neglect to make return.

SECTION 10. In addition to the annual return required by section eight, every such company shall at all times, upon request, furnish to the said commission any information required by the commission concerning the condition, management and operation of its business within the commonwealth, or concerning its rates or charges or the facilities afforded by it to the public therein, and shall comply with all lawful orders of said commission and the commission may at all reasonable times have access to the books of such company.

Companies to furnish information, etc.

SECTION 11. Every company engaged in the business of the transmission of intelligence by electricity within the commonwealth shall keep its books and accounts covering the business done within the commonwealth in a form approved by said commission.

Books and accounts.

The word
"company"
defined.

SECTION 12. The word "company" shall include every person, partnership, association and corporation engaged in the business of the transmission of intelligence by electricity.

Witnesses
may be sum-
moned, etc.

SECTION 13. In all investigations made by the board, and in all proceedings before it, any member thereof may summon witnesses in behalf of the commonwealth, and may administer oaths and take testimony. The fees of such witnesses for attendance and travel shall be the same as for witnesses before the superior court, and shall be paid by the commonwealth upon the certificate of the board filed with the auditor.

When to
take effect.

SECTION 14. This act shall take effect on the first day of July, nineteen hundred and six.

Approved May 31, 1906.

Revised Laws, Chapter 25.

OF TOWNS AND TOWN OFFICERS.

Towns may
construct tele-
graph lines.
1869, 457, § 1.
P. S. 27, § 44.

SECTION 51. A town may construct telegraph lines for its own use upon, along and under the public ways and squares within its limits, subject to the provisions of chapter one hundred and twenty-two, so far as applicable.

— may au-
thorize private
lines.
1869, 457, § 2.
P. S. 27, § 45.
1883, 221.
1889, 434.
1895, 350.
1906, 463,
Part III,
§§ 64-66 (see
pp. 204-207).

SECTION 52. The selectmen may, upon terms and conditions prescribed by them, and subject to the provisions of chapter one hundred and twenty-two, so far as applicable, authorize a person to construct lines for private use upon, along and under the public ways of the town for the transmission, by electricity, of light, or of heat or power, except such as is used by street railway companies or for the transmission, by electricity or otherwise, of intelligence by telegraph or telephone. Upon the construction of such line, the poles and structures thereof within the location of such ways shall become the property of the town, and the selectmen may regulate and control the same, may at any time require the persons using the same to make alterations in the location or construction thereof and may, after notice and a hearing, order the removal thereof. The town may at any time attach wires for its own use to such poles and structures, and the selectmen may permit other persons to attach wires for their private use thereto or to poles and structures constructed by the town, and may prescribe reasonable terms and conditions therefor.

1911, 442
(see *p. 177*);
481 (see *p. 276*).

Penalty for
injury to
same.
1869, 457, § 3.
P. S. 27, § 46.

SECTION 53. Whoever unlawfully injures or destroys any wire, pole, structure or fixture of any such line shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than two years, or by both such fine and imprisonment.

Towns may
regulate tele-
graph, etc.,
wires.
1880, 83, § 1.
P. S. 27, § 47.
1883, 221.

SECTION 54. The selectmen may, within their respective towns, permit telegraph and telephone lines to be laid under any way or square, and may establish reasonable regulations for the erection and maintenance of all lines for the transmis-

sion of intelligence by telegraph or telephone, by electricity or otherwise, or for the transmission by electricity of light, or of heat or power except such as is used by street railway companies, by every person having authority to place poles, wires, structures and other appliances for any purpose in or under public ways or places, including all lines owned or used by said towns.

1889, 398,
434.
1895, 350.
182 Mass. 397,
400.

SECTION 55. The town shall forthwith in writing give notice in detail to the owner, constructor or person using any line therein which is constructed or maintained in violation of such regulations; and if thereafter such unlawful construction is continued or if said lines are not within a reasonable time so altered as to conform to said regulations, the supreme judicial court or the superior court shall have jurisdiction in equity to enjoin the further progress of said work, or to order such line to be removed or altered at the expense of the owners, constructors or persons using the same. If such line belongs to or is used by a town, like action may be taken upon complaint of a person injured, after such notice to the town as the court may order.

Proceedings,
if regulations
are violated.
1880, 83, § 2.
P. S. 27, § 48.
1891, 293.

SECTION 56. Selectmen may authorize citizens of the commonwealth to establish and maintain, in their town, poles, wires and other apparatus for telegraphic and telephonic communication, in conformity with the provisions of chapter one hundred and twenty-two and other laws applicable to telegraph or telephone companies.

Selectmen may
authorize
citizens to es-
tablish poles,
wires, etc.
1880, 83, § 3.
P. S. 27, § 49.

Revised Laws, Chapter 106.

OF THE EMPLOYMENT OF LABOR.

PAYMENT OF WAGES.

SECTION 62. Every . . . telegraph or telephone corporation, . . . and every contractor, person or partnership engaged . . . upon public works or in the construction or repair of . . . roads, bridges, . . . pipes or lines, shall pay weekly each employee engaged in his or its business the wages earned by him to within six days of the date of said payment; and the commonwealth, its officers, boards and commissions shall so pay every mechanic, workman and laborer who is employed by it or them, . . . unless such mechanic, workman, laborer or employee requests in writing to be paid in a different manner; . . . but an employee who is absent from his regular place of labor at a time fixed for payment shall be paid thereafter on demand. The provisions of this section shall not apply to an employee of a co-operative corporation or association if he is a stockholder therein unless he requests such corporation to pay him weekly. . . . No corporation, contractor, person or partnership shall by a special contract with an employee or by

Weekly pay-
ment of wages.
1879, 128.
P. S. 28, § 12.
1886, 87,
§§ 1, 2.
1887, 399, § 1.
1891, 239, § 1.
1894, 508,
§§ 51, 65.
1895, 438.
1896, 241,
334.
1898, 481.
1899, 247.
1900, 470.
1902, 450.
1906, 427.
1907, 193.
1908, 650.
1909, 514,
§ 112.
1910, 350.
Amended,
1911, 208.
See p. 114.
163 Mass. 589.
170 Mass. 140.
172 Mass. 230.

any other means exempt himself or itself from the provisions of this . . . section. Whoever violates the provisions of this section shall be punished by a fine of not less than ten nor more than fifty dollars.

Revised Laws, Chapter 26.

OF CITIES.

Regulation of wires. 1880, 83, § 1. P. S. 28, § 4. 182 Mass. 397, 400.

SECTION 6. Regulations established by a city under the provisions of section fifty-four of chapter twenty-five shall be made by ordinance.

Revised Laws, Chapter 53.

OF THE BOUNDARIES OF HIGHWAYS AND OTHER PUBLIC PLACES AND ENCROACHMENTS THEREON.

Removal of unused telegraph poles, etc. 1889, 398. 153 Mass. 200.

SECTION 5. The aldermen in cities or the selectmen in towns may cause the removal from public ways and places of unused poles, wires, structures or other appliances, at the expense of the owners thereof.

Revised Laws, Chapter 122 (as amended by Acts of 1911, Chapter 509).

OF COMPANIES FOR THE TRANSMISSION OF ELECTRICITY.

CONSTRUCTION OF LINES UPON HIGHWAYS.

Construction of lines. 1849, 93, § 2. G. S. 64, § 2. P. S. 109, § 2. 1883, 221. 1889, 434. 1895, 350. 97 Mass. 555. 136 Mass. 75, 485. 153 Mass. 200. 188 Mass. 250; 265. [2 Op. A. G. 423.] 182 Mass. 397. See St. 1903, 320. See 1911, 481, below. Amended by 1911, chap. 509, § 1. Location, etc., by mayor and aldermen, etc. 1849, 93, § 3. G. S. 64, § 3. P. S. 109, § 3. 1903, 237. 1906, 117. Amended by 1911, chap. 509, § 2. See 1911, 509, §§ 7, 8, p. 197.

SECTION 1. A company which is incorporated for the transmission of intelligence by electricity or by telephone, whether by electricity or otherwise, or for the transmission of electricity for lighting, heating or power, or for the construction and operation of a street railway or an electric railroad, may, under the provisions of the following sections, construct lines for such transmission upon, along, under and across the public ways and across and under any waters within the commonwealth, by the erection or construction of the poles, piers, abutments, conduits and other fixtures, except bridges, which may be necessary to sustain or protect the wires of its lines; but such company shall not incommode the public use of public ways or endanger or interrupt navigation.

SECTION 2. A company desiring to construct a line for such transmission upon, along, under or across a public way shall in writing petition the mayor and aldermen of the city or the selectmen of the town in which it is proposed to construct such line for permission to erect or construct upon, along, under or across said way the wires, poles, piers, abutments or conduits necessary therefor. A public hearing shall be held on the petition, and written

notice of the time and place of the hearing shall be mailed at least seven days prior thereto by the clerk of the city or by the selectmen of the town to all owners of real estate abutting upon that part of the way upon, along, across or under which the line is to be constructed, as such ownership is determined by the last preceding assessment for taxation. After a public hearing as aforesaid, the mayor and aldermen, or the selectmen may by order grant to the petitioner a location for such line, specifying therein where the poles, piers, abutments or conduits may be placed, and in respect to overhead lines may also specify the kind of poles, piers, or abutments which may be used, the number of wires or cables which may be attached thereto, and the height to which the wires or cables may run.

After the erection or construction of such line the mayor and aldermen or selectmen may, after giving the company or its agents an opportunity to be heard, or upon petition of the company without notice or hearing, by order permit an increase in the number of wires or cables, and direct an alteration in the location of the poles, piers, abutments or conduits or in the height of the wires or cables. The mayor and aldermen or selectmen may, upon petition in writing by two or more companies subject to the provisions of this chapter, without notice or hearing, by order authorize any such company to attach its wires and fixtures to existing poles, piers or abutments of either or any of the other petitioners, or to maintain its wires or cables in the conduits of either or any of said other petitioners. The mayor and aldermen or selectmen may, upon petition in writing by two or more companies subject to the provisions of this chapter, and after notice to abutting landowners and a hearing as hereinbefore provided, by order grant to said companies joint or identical locations for the erection or construction of poles, piers, abutments or conduits to be owned and used in common by them. No order of the mayor and aldermen or selectmen shall be required for renewing, repairing or replacing wires, cables, poles, piers, abutments, conduits or fixtures once erected or constructed under the provisions of law, or for making house connections or connections between duly located conduits and distributing poles.

The order granting a location or an alteration thereof, or authorizing an increase in the number of wires or cables or attachments, such as are hereinbefore described, shall be recorded by the clerk of the city or of the town in books kept exclusively for the purpose, and where notice has been given as hereinbefore provided the clerk of the city or the chairman or a majority of the selectmen shall certify on said record that the order was adopted after due notice and a public hearing as hereinbefore prescribed, and no such order shall be valid without such certificate. The company or companies in whose favor the order is made shall pay for such record the same fees as are allowed for the entering and recording of deeds by registers of deeds, and shall be entitled to attested copies of said orders and certificates upon payment of the same fees as are allowed to registers of deeds for copies.

The mayor and aldermen or selectmen may under the provisions of this section authorize the attachment of the wires and fixtures of a street railway or electric railroad company to the poles, piers and abutments of another owner, or the attachment of the wires and fixtures of another owner to the poles, piers and abutments of such company, and may grant joint or identical locations for the erection or construction of poles, piers or abutments to be owned and used in common by such company and another owner or other owners, and locations for the transmission lines and telephone, signal and feed wires of such company in public ways or parts thereof, other than those public ways or parts thereof in which the tracks of such company are laid, and locations for additional poles to support, or alterations of locations for existing poles supporting, trolley or span wires; and all locations granted to a street railway or electric railroad company hereunder shall be subject only to revocation as provided in section sixty-six of Part III of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six; but nothing contained in this section save as hereinbefore expressly set forth shall be held to apply to the poles, wires and other appliances and equipment which a street railway or electric railroad company, by a grant of location, or extension or alteration thereof, under any general or special law now or hereafter in force relating to street railways or electric railroads may be authorized to construct, maintain and operate in a public way; and no terms, restrictions and obligations, other than such as may be imposed upon a grant of location for a street railway or electric railroad, or an extension or alteration thereof, under any general or special law now or hereafter in force relating thereto, shall be imposed upon locations granted to a street railway or electric railroad company hereunder, save locations for its transmission lines or telephone, signal or feed wires in public ways or parts thereof other than those public ways and parts thereof in which the tracks of such company are laid.

Acts of 1911, Chapter 481.

An Act to confirm the Locations of Electric Lines.

Locations of electric lines.

SECTION 1. All locations for poles, piers, abutments, conduits and other fixtures necessary to sustain or protect the wires of the lines of any of the companies designated in section one of chapter one hundred and twenty-two of the Revised Laws, and of any unincorporated owners and associations subject to the provisions of said chapter, heretofore granted by, or under the authority of, the mayor and aldermen of a city or the selectmen of a town and now in actual use by the respective companies, owners or associations to which the same were granted, or their legal successors or assigns, and all alterations of such locations, shall upon compliance with the provisions of section two of this act be ratified and confirmed subject to all lawful terms, obligations, restrictions, limitations, regulations and conditions set forth in said grants and to all laws now or hereafter in force applicable thereto. Nothing herein contained and no act done hereunder shall be held to make lawful any of the structures hereinbefore named for which an express grant of location has not been made by, or under the authority of, the mayor and aldermen or select-

men, as the case may be, and which has not been erected, constructed and maintained in accordance with the requirements of such grant.

SECTION 2. Any company, owner or association desiring to avail itself of the provisions of this act shall, on or before the first day of January, nineteen hundred and thirteen, file with the city or town clerk, as the case may be, to be recorded and kept with the records of original locations for poles and wires, a map or maps showing in detail the location and nature of the structures alleged to be within the provisions of section one, together with a memorandum of the respective dates of the several grants of locations therefor.

Details of locations to be recorded, etc.

SECTION 3. This act shall take effect upon its passage. [Approved May 26, 1911.

DAMAGES OF LAND OWNERS.

SECTION 3. An owner of land which abuts upon a public way along which telegraph or telephone, electric light, heating or power lines are constructed, erected or altered in location or construction by any telegraph or telephone, electric light, heating or power company, whose property is injuriously affected or diminished in value by occupation of the ground or of the air, or otherwise by such construction, erection or alteration, whether such owner is also the owner of the fee in such way or not, may, within three months after such construction, erection or alteration, apply to the mayor and aldermen of the city or selectmen of the town in which such land is situated to assess and appraise his damages. Before entering upon the service, the mayor and aldermen or selectmen shall severally be sworn faithfully and impartially to perform the duties herein required. They shall, upon view, make a just appraisal in writing of the loss or damage, if any, to the applicant, sign duplicates thereof, and on demand deliver one copy to the applicant and the other to the company or its agent. If damages are assessed, the company shall pay them and the costs of the appraisers. If the appraisers find that the applicant has suffered no damage he shall pay said costs. The mayor and aldermen and selectmen shall each receive two dollars a day for services performed as appraisers.

Damages caused by erection of lines.
Costs.
1849, 93.
§§ 4, 5.
G. S. 64.
§§ 4, 5.
P. S. 109.
§§ 4, 5.
1884, 306, § 1.
1895, 350.
136 Mass. 75.
172 Mass. 197.
194 Mass. 80.

SECTION 4. If such company does not pay such damages assessed, or, upon appeal, the amount of the final judgment, within thirty days after demand, the mayor and aldermen or selectmen may, upon request of such owner, remove all the poles, wires or other structures of such company from that portion of the public way upon which the land of such person abuts, first leaving a written statement at the office of such company in such city or town of the time when and place where they intend to remove such poles, wires or structures, not less than forty-eight hours prior to such removal. If such company has no office in such city or town, such notice shall be deposited in the post office, postage prepaid, and directed to such company at its office in some city or town in the county. The city or town so removing any such poles, wires or structures may recover the expense thereof of such company. The

If amount is not paid within thirty days, poles, etc., may be removed.
1884, 306, § 2.
1895, 350.
194 Mass. 80.

provisions of this section shall not prevent such owner from collecting the damages assessed.

Assessment
by jury.
1849, 93, § 4.
G. S. 64, § 6.
P. S. 109, § 6.
194 Mass. 80.

SECTION 5. A person who is aggrieved by the assessment of his damages may have them determined by a jury in proceedings according to the provisions of section eighty of chapter forty-eight. If the jury increase the damages, the amount of the verdict and all charges shall be paid by the company; otherwise, the charges shall be paid by the applicant.

CAPITAL AND DEBTS.

Capital
stock and
statement
filed.
1851, 247, § 3.
G. S. 64, § 7.
P. S. 109, § 7.
1893, 274.

SECTION 6. A telegraph or telephone company shall not commence the construction of its line until three-fourths of its capital stock have been unconditionally subscribed for, and at least one-half has been paid in in cash; and the directors shall, within ten days after commencing construction, file in the office of the secretary of the commonwealth a sworn statement of such subscription and payment.

Limit of debt.
1851, 247, § 4.
G. S. 64, § 8.
P. S. 109, § 8.

SECTION 7. Such company shall not at any time contract or owe debts to a larger amount than one-half of its capital stock actually paid in.

Liability of
officers.
1851, 247, § 6.
G. S. 64, § 9.
P. S. 109, § 9.

SECTION 8. The president and treasurer of such company shall be jointly and severally liable for all its indebtedness, in case of wilful neglect or omission on their part to comply with any of the provisions of this chapter.

TELEGRAPH COMPANIES.

Duties of
companies.
1849, 93, § 6.
G. S. 64, § 10.
P. S. 109, § 10.
13 Allen, 226.
113 Mass. 299.
137 Mass. 463.
Sec St. 1906,
433, above.

SECTION 9. A telegraph company shall receive despatches from and for other telegraph companies and associations, and from and for any person; and, upon payment of the usual charges for transmitting despatches according to the regulations of the company, shall transmit them faithfully and impartially.

205 Mass. 603, 604.

Charges for
despatches
received by
mail, etc.
1849, 93, § 6.
G. S. 64, § 10.
1867, 348.
P. S. 109,
§§ 10, 11.
205 Mass. 604.

SECTION 10. A telegraph company shall receive, compute and transmit despatches which may be received at its offices from another telegraph company or by mail, at the same rates of charge as for despatches which may be received for transmission from individuals on the same day and at the same place. A telegraph company which wilfully neglects or refuses to comply with the provisions of this or the preceding section shall forfeit not more than one hundred dollars to the company or person who sends or desires to send the despatch.

Negligence in
transmission
of telegraphic
messages.
1885, 380.
1909, 402, 542.
197 Mass. 119,
124.
205 Mass. 603,
604.

SECTION 11. A telegraph company shall be liable for damages to the amount of one hundred dollars actually caused by its negligence, or that of its agents, in transmitting, receiving or delivering telegraphic messages, and any limit of such liability by contract or regulation shall apply only to the damages in each case in excess of one hundred dollars; but no action therefor shall be maintained unless a claim is presented in writing to such company or its agent within sixty days after such right of action accrues. The provisions of this

section shall not apply to negligence occurring in a telegraph office which is established for the convenience and safety of a railroad corporation in the running of its trains, and transacting a public telegraph business only as incidental thereto, nor to negligence in the delivery of messages received at such office.

TELEPHONE COMPANIES.

SECTION 12. A person or corporation owning, controlling or operating a telephone exchange or service in this commonwealth shall, upon application of a telegraph company, furnish such company with the use of a telephone or telephones and telephone service, and connection with their respective exchanges, with the subscribers thereto, and with their telephone service, without discrimination between telegraph companies as to such connection, service or use of instruments furnished or charges therefor for the same class of service.

Service to telegraph companies without discrimination. 1885, 267, § 1. See St. 1906, 433, above.

SECTION 13. A person or corporation owning, controlling or operating a telephone exchange or service in this commonwealth shall, upon application of an individual or corporation and the tender of the charges or rental usual or customary for the class of service required, without discrimination for the same class of service rendered, furnish such individual or corporation with the use of a telephone and telephone service and connection with their respective exchanges and the subscribers thereto, if the applicant secures the rights necessary to make the connections applied for and pays to the telephone company in advance an amount sufficient to cover the actual cost of the extension, if said extension is more than one mile from any main exchange circuit of the said telephone company.

Telephone service without discrimination. 1885, 267, § 2.

SECTION 14. The supreme judicial court or the superior court shall have jurisdiction in equity to enforce the provisions of the two preceding sections.

Provisions may be enforced in equity. 1885, 267, § 3.

DAMAGES.

SECTION 15. A telegraph company shall be liable in damages to a person injured in his person or property by the poles, wires or other apparatus of such company. If they are erected upon a public way, the city or town shall not, by reason of anything contained in this chapter or done thereunder, be discharged from its liability, but all damages and costs recovered against it on account of such injury shall be reimbursed by the company which owns the poles, wires or other apparatus.

Injury to person or property. 1851, 247, § 2. 1859, 260. G. S. 64, § 11. P. S. 109, § 12. 9 Gray, 386. 97 Mass. 555. 136 Mass. 75. 161 Mass. 558. 118 Mass. 265. 184 Mass. 150.

PROTECTION AND MARKING OF WIRES.

SECTION 16. A person or a corporation, private or municipal, owning or operating a line of wires over or under streets or buildings in a city or town shall use only strong and proper wires safely attached to strong and sufficient supports and

Regulations concerning wires in cities and towns. 1890, 404, § 1.

1899, 337, § 1.
161 Mass. 583.
178 Mass. 503.
185 Mass. 214,
218.

insulated at all points of attachment; shall remove all wires the use of which is abandoned; shall properly insulate every wire where it enters a building, and, if such wire is other than a wire designed to carry an electric light, heat or power current, shall attach to it at a proper point in the circuit, near the place of entering the building, and so situated as to avoid danger from fire, an appliance adapted at all times to prevent a current of electricity of such intensity or volume as to be capable of injuring electrical instruments or of causing fire from entering the building by means of such wire beyond the point at which such appliance is attached; and shall properly insulate every wire within a building which is designed to carry an electric light, heat or power current.

Names of
owners to be
attached.
1890, 404, § 2.
1899, 320,
337, § 2.
Amended by
1911, chap.
509, § 5.

SECTION 17. *Such person or corporation shall plainly mark each pole, pier, abutment, or other fixture supporting wires or cables containing wires over streets or buildings with the name or initials of the owner of such pole, pier, abutment or other fixture. Wherever cross arms or other appliances for the support of wires or cables belonging to different owners are attached to the same pole, pier, abutment or other fixture, every such cross arm or other appliance shall plainly be tagged or marked with the name or initials of the owner thereof. Wherever wires or cables belonging to different owners are attached to the same cross arm or other appliances for the support of wires or cables, every wire or cable shall be tagged or marked with the name or initials of the owner at or near its point of attachment to such cross arm or other appliance. No such tag or mark shall be required for the wires, poles, piers, abutments and other fixtures of a street railway or electric railroad company, except for its feed wires supported by poles carrying wires or cables belonging to another owner, and for its poles supporting wires or cables belonging to another owner, and for poles belonging jointly to the street railway company and another owner.*

OFFICERS TO SUPERVISE WIRES.

Inspector
of wires;
duties.
1890, 404,
§§ 3, 4.
1899, 337,
§§ 3, 4.

SECTION 18. A city shall, by ordinance, designate or provide for the appointment of an inspector of wires, and any town may, at an annual town meeting, instruct its selectmen to appoint such an inspector. Such inspector shall supervise every wire over or under streets or buildings in such city or town and every wire within a building which is designed to carry an electric light, heat or power current, shall notify the person or corporation owning or operating any such wire whenever its attachments, insulation, supports or appliances are improper or unsafe, or whenever the tags or marks thereof are insufficient or illegible, shall, at the expense of the city or town, remove every wire the use of which has been abandoned and every wire which is not tagged or marked as hereinbefore required, and shall see that all laws and regulations relative to wires are strictly enforced. A city or town may recover in an action of contract of the person or corporation

owning any wire so removed the expense which it has incurred for the removal thereof.

SECTION 19. The supreme judicial court or the superior court shall have jurisdiction in equity upon petition of the officer or inspector designated or appointed as aforesaid, to enforce the provisions of the three preceding sections and to restrain the use or maintenance, or to cause the removal, of any wire, pole or other support which is erected, maintained or used in violation of the provisions of said sections.

Provisions may be enforced in equity. 1890, 404, § 5. See 1911, 364, 371.

POLES TO BE INSULATED.

SECTION 20. *Poles and other structures which are used to support lines for the transmission of electricity shall be insulated in such manner as to protect employees and other persons from accidents. If such poles and other structures are of any material except wood, and support lines which are operated at a voltage in excess of two thousand volts, they shall be plainly and conspicuously marked "Dangerous. Keep away." The officer and inspector of wires appointed under the authority of section eighteen of said chapter one hundred and twenty-two, or the commissioner of wires of the city of Boston, shall enforce the provisions of this section, and he shall be the sole judge of what constitutes a proper insulation and marking.*

Insulation of poles. 1895, 228, §§ 1, 2. Amended by 1911, chap. 609, § 4.

SECTION 21. A person or corporation owning poles which are used for the transmission of electricity who fails to comply with the provisions of the preceding section shall be punished by a fine of not less than ten nor more than one hundred dollars for every pole left uninsulated for an unreasonable time after a request for a proper insulation by the officer, inspector or commissioner acting under the provisions of the preceding section.

Penalty. 1895, 228, § 3.

WIRES, ETC., NOT TO BE AFFIXED WITHOUT PERMISSION. TO BE MARKED.

SECTION 22. A corporation or person maintaining or operating telephone, telegraph or other electric wires or any other person who in any manner affixes or causes to be affixed to the property of another any pole, structure, fixture, wire or other apparatus for telephonic, telegraphic or other electrical communication, or who enters upon the property of another for the purpose of affixing the same, without first obtaining the consent of the owner or lawful agent of the owner of such property, shall, on complaint of such owner or his tenant, be punished by a fine of not more than one hundred dollars.

Affixing telephone wires, etc., to property without permission. 1884, 302, § 1. 201 Mass. 279.

SECTION 23. *A corporation or person maintaining or operating telephone, telegraph or other electric wires shall, at all places where such wires are affixed by any pole, structure or fixture to the property of another, mark such pole, structure, or fixture in a clear, durable and legible manner with the name or initials of*

Name of corporation on pole or structure. 1884, 302, § 2. Amended by 1911, chap. 609, § 5.

the corporation or person maintaining or operating such wires, and any corporation or person failing to comply with the provisions of this section shall be punished by a fine of not more than one hundred dollars.

GENERAL PROVISIONS.

Annual re-
turns, etc.
1851, 247, § 5.
1857, 40, § 1.
1858, 46, § 1.
G. S. 64, § 12.
P. S. 109, § 13.
See St. 1906,
433, §§ 8, 9,
above.

SECTION 24. Every telegraph company shall annually, on or before the fifteenth day of October, make returns to the secretary of the commonwealth, according to forms to be furnished on application to him, specifying therein the location and line of its telegraph, its name, capital actually paid in, manner of investment of capital, annual receipts and expenditures, real estate and its value, cash on hand, credits on book account and the amount of its indebtedness. Such return shall be signed and sworn to by the president, clerk and treasurer of the company.

Unincorporated
companies.
1849, 93,
§§ 1, 6.
1851, 247, § 2.
G. S. 64, § 13.

SECTION 25. Owners and associations engaged in the business specified in section one of this chapter, although not incorporated, shall be subject to the provisions of this chapter, so far as they are applicable.

P. S. 109, § 14.

13 Allen, 226.

97 Mass. 555.

No easement
obtained by
poles, etc.
1851, 247, § 1.
G. S. 64, § 14.
P. S. 109, § 15.

SECTION 26. No enjoyment, for the purposes specified in section one of this chapter, by a person or corporation for any length of time of the privilege of having or maintaining poles, wires or apparatus in, upon, over or attached to any building or land of other persons shall give a legal right to the continued enjoyment of such easement or raise any presumption of a grant thereof.

Injury to
lines, wires,
etc.
1849, 93, § 7.
G. S. 64, § 15.
P. S. 109, § 16.
Amended.
1908, 233.

SECTION 27. Whoever unlawfully and intentionally injures, molests or destroys any line, wire, pole, pier or abutment, or any of the materials or property, *of any street railway company, of any electric railroad company, or of any city or town engaged in the manufacture and sale of electricity for light, heat or power* or of any company, owner or association described in sections one and twenty-five shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than two years, or by both such fine and imprisonment; *and whoever shall do any of the acts prohibited by this section between the hours of four o'clock in the afternoon and seven o'clock in the morning shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than four years, or by both such fine and imprisonment.*

Wires may be
cut, when.
1869, 141, § 1.
P. S. 109, § 17.
Amended by
1911, chap.
509, § 6.

SECTION 28. *Whenever, in order to move a building or for any other necessary purpose, a person desires that the wires of any such company be cut, disconnected or removed, the company shall forthwith cut, disconnect or remove the same, if the person desiring this to be done has first left a written statement, signed by him, of the time when, and the place, described by reference to the crossings of streets or highways, where he wishes to remove said wires, at the office of the company in the town in which such*

place is situated, twenty-four hours before the time so stated, or, if there is no such office, if he has deposited such statement in the post office, properly prepaid, and directed to the company at its office nearest to said place, three days before the time mentioned in said statement. If the company neglects or refuses to cut, disconnect or remove wires as hereinbefore provided, the inspector of wires, or the selectmen of a town where there is no inspector of wires, may cause the same to be cut, disconnected or removed, and the city or town may recover of the company in an action of contract the expense of so doing.

SECTION 29. Whoever wilfully cuts, disconnects, removes or otherwise interrupts the use of the wires of any such company, without first giving notice as provided in the preceding section, shall be punished as provided in section twenty-seven.

Penalty for cutting wires without notice.
1869, 141, § 2.
P. S. 109, § 18.

SECTION 30. The provisions of the two preceding sections shall not apply to any wires attached to poles which have not been erected in compliance with the provisions of law.

Limitation of preceding sections.
1869, 141, § 3.
P. S. 109, § 19.

[For full text of 1911, 509, see pp. 194-198.]

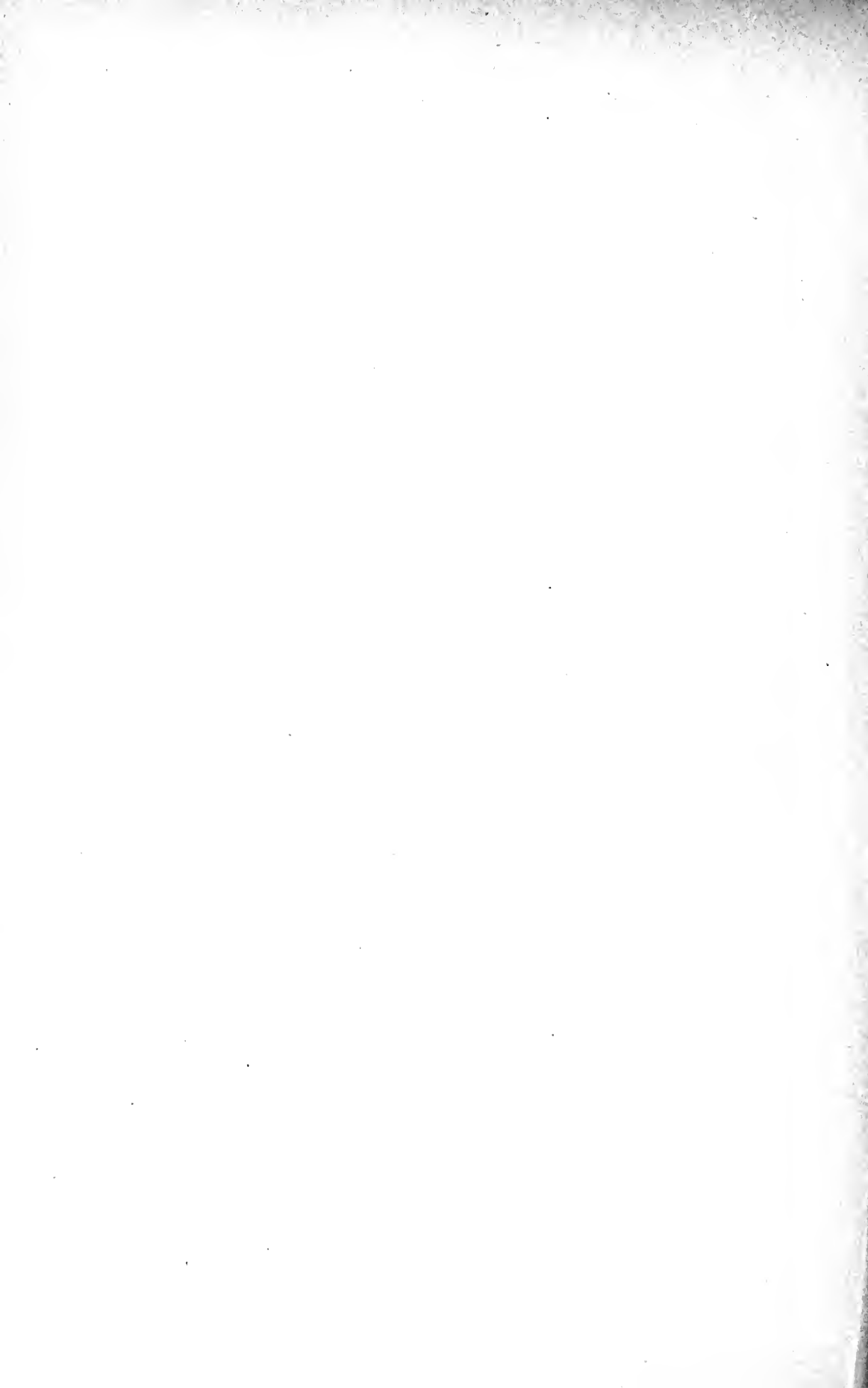
Acts of 1909, Chapter 490, Part III, § 52.

TAXATION OF TELEGRAPH COMPANIES.

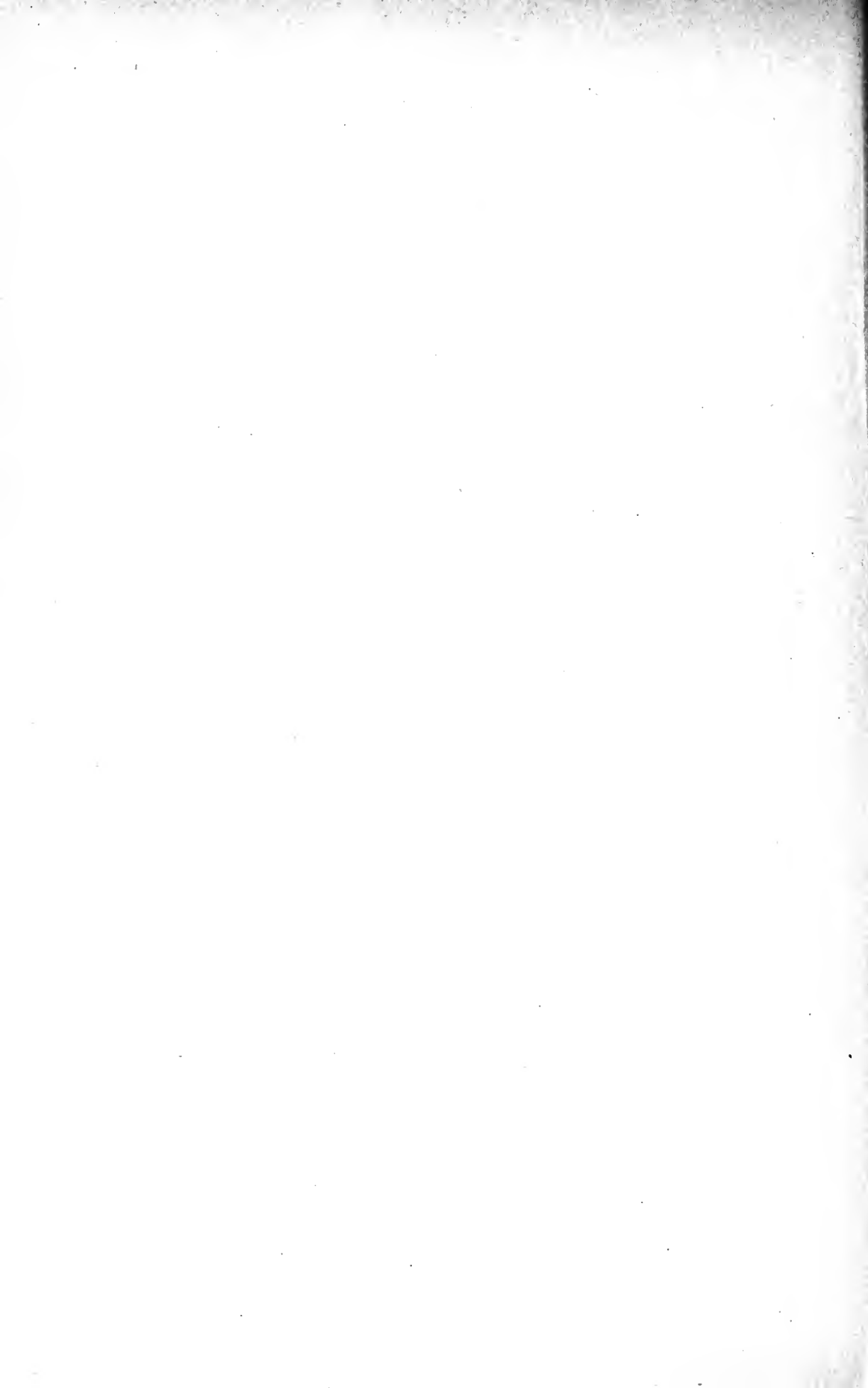
SECTION 52. Every corporation or association chartered or organized without the commonwealth which owns, controls or uses a line of telegraph within the commonwealth, shall make the returns required in section forty to be made by telegraph companies within the commonwealth, except the list of its shareholders; and shall annually pay a tax at the rate determined in the manner provided in section forty-three; and all telegraph lines within the commonwealth controlled and used by such corporation or association, shall, for the purposes of this part, be deemed to be a part of its own lines.

Returns and tax of foreign telegraph companies.
1864, 208, § 9.
1865, 283, § 7.
P. S. 13, § 42.
R. L. 14, § 48.
139 Mass. 564.
125 U. S. 530.
141 U. S. 40.
163 U. S. 1.

[For Acts of 1909, Chapter 439, relative to the taxation of poles for wires, and for other provisions as to taxation of wires, conduits, etc. see Part III, pp. 234-236.]



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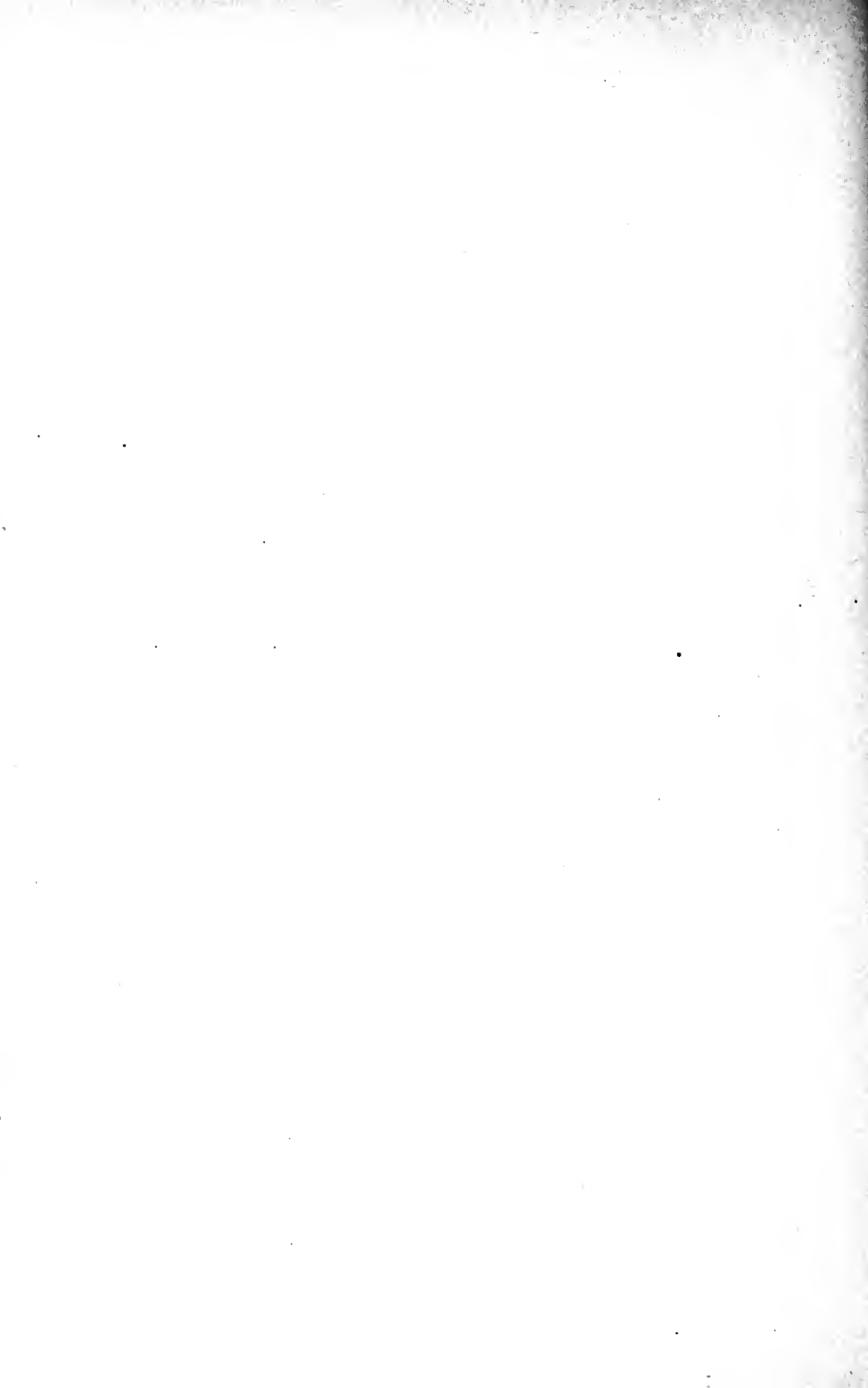
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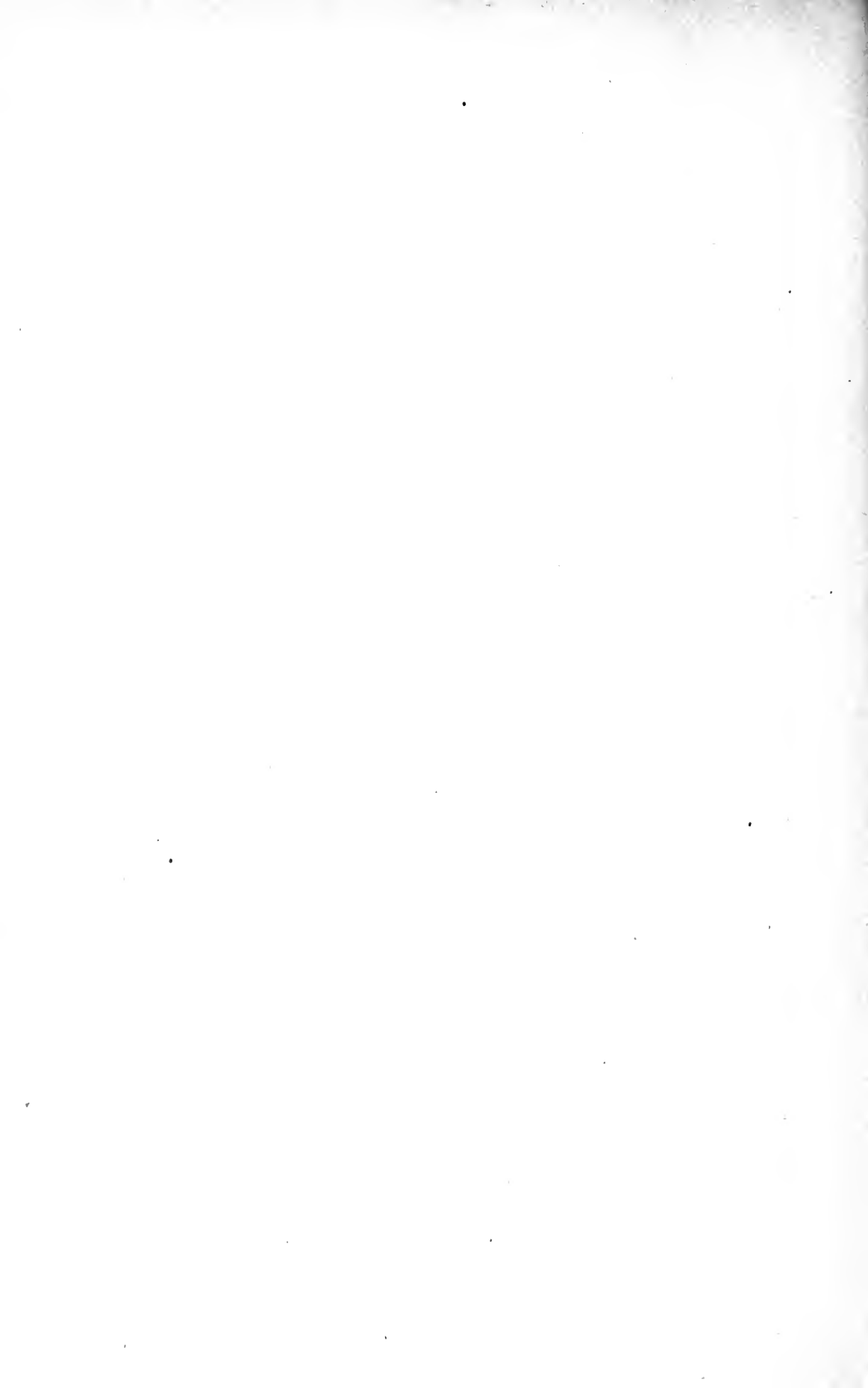
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